

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

*for the Period of July 1, 2020 – June 30, 2021*

Virginia Department of Health

August 30, 2024



**VDH** VIRGINIA  
DEPARTMENT  
OF HEALTH

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

**Table of Contents**

Table of Contents ..... 2

Commissioner’s Annual Decision ..... 3

<https://www.vdh.virginia.gov/licensure-and-certification/active-supervision/> ..... 3

    COVID-19 Pandemic Response ..... 3

    Content of the Report..... 5

Cooperative Agreement - Introduction and Background ..... 6

    Virginia Code § 15.2-5384.1 ..... 6

    Definition of a Cooperative Agreement..... 6

    The Ballard Health Cooperative Agreement..... 6

    Conditional Approval of the Cooperative Agreement ..... 7

    Active Supervision of the Cooperative Agreement ..... 7

        Active Supervision Staff ..... 7

        Cooperative Agreement Active Supervision Committee..... 7

Annual Review of the Cooperative Agreement ..... 9

    Ballad’s FY 2021 Annual Report and COPA Compliance Office Report..... 9

    Assessment of Ballard’s Compliance with the 49 Conditions of the Virginia Order ..... 9

Review of Cooperative Agreement Complaints ..... 28

The Benefits of the Cooperative Agreement Continue to Outweigh the Disadvantages Attributable to a Reduction in Competition Resulting from the Cooperative Agreement ..... 28

Commissioner’s Decision ..... 300

## 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), 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 third annual report and decision, covering the period July 1, 2020, through June 30, 2021. It is intended to satisfy the requirement related to the Cooperative Agreement between Mountain States Health Alliance (Mountain States) and Wellmont Health System (Wellmont) that allowed the formation of Ballad Health (Ballad). The previous annual decisions are available on the Virginia Department of Health (VDH or The Department) website at the link:

<https://www.vdh.virginia.gov/licensure-and-certification/active-supervision/>

## 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" under the Virginia Order and Letter Authorizing a Cooperative Agreement (Virginia Order or Order). In his letter the Commissioner suspended certain conditions and provisions of the Order during the emergency period, as permitted by Condition 49 of the Order (shown below in Exhibit 1).

The suspension of requirements issued on April 23, 2020, by the Commissioner in response to the Material Adverse Event created by the COVID-19 pandemic expired June 30, 2021, when the state of emergency declared by the Governor ended. This assessment addresses the fiscal year 2021, covering July 1, 2020 through June 30, 2021.

### *Exhibit 1*

#### **Requirements of The Virginia Order Suspended by the Commissioner Due to COVID-19**

For the Period March 12, 2020, through June 30, 2021

The following is an excerpt from the Commissioner's decision letter approving Ballad's request to suspend certain Conditions of the Virginia Order and other requirements found in state Code.

*Condition 5: The following sections of the Managed Care Contracts and Pricing Limitations contained in Article V of the Tennessee Certificate of Public Advantage Terms of Certification may be temporarily suspended, as further detailed below:*

- *Section 5.04*
- *Section 5.05(e)*
- *Section 5.06 solely for purposes of obtaining necessary supplies to deal with the public emergency*

- *Addendum One solely to the extent that payors agree to voluntarily prepay or otherwise financially support Ballad's public emergency relief efforts.*

*Conditions 8, 19, 23, 24, 25, 33, 34, 35, and 36:*

*Spending in accordance with the plans submitted under each of these conditions, as well as actions required by those plans to be performed during the period of the emergency, may be temporarily suspended. Ballad shall submit updated plans and spending commitment schedules within 90 days after the period of emergency declared in Executive Order 51 expires or is terminated. The total spending commitment required by each of these conditions is not amended and shall not be reduced. Additionally, requirements related to participation in the following programs are not suspended: Commonwealth's ConnectVirginia health information exchange, ConnectVirginia's Emergency Department Care Coordination Program and Immunization Registry, and Virginia's Prescription Monitoring Program.*

*Condition 10: This condition may be temporarily suspended; however, Ballad is encouraged to attempt to negotiate a risk-based component during any contract negotiation during the duration of the suspension.*

*Condition 11: Working with the Virginia Department of Medical Assistance Services (DMAS) to develop and implement value-based payment programs may be temporarily suspended.*

*Condition 12: Required periodic data reporting and online posting may be temporarily suspended; Ballad will be required to submit, and post online, within 90 days after the period of emergency declared in Executive Order 51 expires or is terminated.*

*Condition 21: Compliance with the 60-day notice requirement contained in subsection B may be temporarily suspended as long as Ballad provides notice of any reduction action as set forth in subsection B 5 days in advance of implementing such action.*

*Condition 22: Compliance with any career development programs may be temporarily suspended. DocuSign Envelope ID: 67C97671-6872-4691-8564-97471F968229*

*Condition 26: The schedule to create a common IT platform within 48 months of closing (by 1 February 2022) is extended only to the point of accounting for any adverse impact to the schedule from the loss of IT contractors due to the pandemic.*

*Condition 27: The Commissioner previously provided a temporary suspension of the following requirements until 30 days after expiration of the declared COVID-19 state of emergency:*

- *provision of notice to the Commissioner 9 months in advance of a change in service lines or scope of services at an existing hospital;*
- *submission of a plan detailing how essential services will continue to be provided*
- *receiving approval of the plan by the Virginia Department of Health (VDH) prior to implementation.*

*Condition 40: Provision of information regarding key financial metrics and the balance sheet comparing performance to the prior year may be temporarily suspended. Ballad shall submit the key financial metrics and the balance sheet comparing performance to the prior year within 90 days after the period of emergency declared in Executive Order 51 expires or is terminated.*

*Condition 47: Participation in quarterly teleconferences with DMAS scheduled to occur during the period of the COVID-19 emergency may be temporarily suspended.*

*The temporary suspension of the conditions detailed above is effective for the period of the emergency declared by Executive Order 51 and a recovery period of 30 days after Executive Order 51 expires or is terminated, except where otherwise noted. Ballad may seek an extension of the recovery period, if necessary. Additionally, the temporary suspension of these conditions does not reduce or remove Ballad's obligations and commitments under the Order, including Ballad's spending commitments set forth in the conditions of the Order.*

*With respect to the quantitative measures required by 12 VAC 5-221-100, VDH will not establish any new quantitative measures; and the Technical Advisory Panel will not meet during the period of the COVID-19 emergency. Quarterly and annual reporting on the quantitative measures, beginning with the submission currently due on May 15, 2020, will be submitted at the first quarterly report that is scheduled at least 60 days following the expiration or termination of the emergency declared in Executive Order 51.*

### ***Content of the Report***

This report constitutes the Commissioner's annual assessment covering Ballad's Fiscal Year (FY) 2021. Information available to the Commissioner about Ballad's activities subsequent to June 30, 2021, 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 the Department'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;
- The Department's annual determination as to whether 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).<sup>1</sup> 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 Districts, Smyth County, Washington County, and the City of Bristol.

### ***Definition of a Cooperative Agreement***

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.”<sup>2</sup>

### ***The Ballad Health Cooperative Agreement***

Pursuant to §15.2-5384.1, a Cooperative Agreement was entered into by Mountain States and Wellmont. The resulting formation of Ballad Health was allowed by the Commonwealth with certain heretofore elusive 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 travel issues related to the rural nature of the region;
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;

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<sup>1</sup> Va. Code § 15.2-5384.1(A)

<sup>2</sup> Va. Code § 15.2-5369

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 focus areas form the basis of many of the Conditions imposed on the approval of the Cooperative Agreement and remain a focus in the continuous active supervision and periodic assessment of the benefits 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.

### ***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 and 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 Virginia Order provides Ballad with state action immunity from state and federal antitrust laws by replacing competition with state regulation and active supervision.

The Commissioner approved the application for a cooperative agreement subject to Ballad's ongoing 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/licensure-and-certification/cooperative-agreement/>

### ***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 unit 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; who reports to the OLC Director. The Department's Deputy Commissioner for Governmental and Regulatory Affairs is the Commissioner's point person for ensuring adequate active supervision of the Cooperative Agreement.

#### **Cooperative Agreement Active Supervision Committee**

The Cooperative Agreement Active Supervision Committee, consisting of community and the Department's internal leaders, was assembled by the Department to support active supervision efforts. Prior to the COVID-19 pandemic, the committee convened quarterly to provide guidance and recommendations on plans, reports, and requests submitted by

Ballad. The members also support the supervision efforts by providing additional qualitative and quantitative information pertaining to the Cooperative Agreement. The active supervision committee is expected to be reactivated after the effects of COVID-19 dissipate. The committee membership roster includes the active supervision staff members and the incumbents in the following positions:

The Department's Deputy Commissioner for Population Health;

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

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

Leadership from the Department's partner agencies, which may include 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 the Department's Office of Health Equity; and

A Rural Health Manager within the Department's Office of Health Equity.

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## **Annual Review of the Cooperative Agreement**

### ***Ballad's FY 2021 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. The Department received Ballad's FY 2021 Annual Report and FY 2021 COPA Compliance Office Annual Report via email on October 31, 2022. Ballad subsequently submitted an Amended FY 2021 Annual Report on March 21, 2023. Throughout this document, any reference to Ballad's FY 2021 Annual Report refers to the Amended FY 2021 Annual Report. The reporting period for Ballad's FY 2021 Annual Report covers the timeframe of July 1, 2020, through June 30, 2021. Ballad's 2021 Annual Report and Executive Summary are available on the Department'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 Ballard 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 applicable.

**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 Ballard'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 Ballard's annual baseline spending levels. Ballard must provide annual baseline spending levels to the Commissioner and Tennessee at the same time.**

Ballad provided its FY21 Baseline and Plan spending data to the Department at the same time as it is provided to Tennessee.

The Virginia Order requires Ballard to create the six, three-year plans (the Required Plans) listed in Table 1 as delineated in Conditions 8, 24, 33, 34, 35, and 36; and submit them for the Commissioner's review and approval. Subsequent versions of the plans must be submitted prior to the three-year expiration of each plan. Those also must be reviewed and approved by the Commissioner. Pursuant to the requirements of Condition 4, the original six Required Plans were submitted to the Commissioner for his review and approved through June 30, 2021; submission, review, and approval of replacement plans was due by June 30, 2021. Each Required Plan has a minimum level of required spending attached, which must be accomplished within 10 years of the merger according to the annual schedule contained in Exhibit B of the Virginia Order. Ballard's plans are available on the Department's Cooperative Agreement Webpage at <https://www.vdh.virginia.gov/licensure-and-certification/cooperative-agreement/reports-from-ballad-health/>

Additionally, to ensure that cost-savings achieved through the merger of Mountain States and Wellmont are reinvested in the region, the cooperative agreement application contained Baseline spending commitments related to each of the six areas that are the basis for the Required Plans. The Baseline spending requirements are calculated as the average of the last three years prior to the merger forming Ballard.

Ballad's FY 2021 Baseline spending levels for each of the six required areas is shown in Table 1. Note that for Tables 1 and 2, each Plan area has an annual Baseline spending requirement that is independent of the other Plan areas. The sum of the Baseline variances is not calculated or displayed, as the figure has no meaning in this context.

Ballad's verified actual Baseline spending for FY 2021 resulted in a shortfall in three of the six areas: Rural Health (\$7,879,533), Population Health (\$202,962), and Health Information Exchange (\$54,077). The amount of each shortage is required to be added to Ballard's required Plan spending level in the same category for the year.

Table 1. Ballard's Baseline Spending Levels, FY 2021

Plan Title	FY 2021 Baseline	FY 2021 Actual Baseline Spend	FY 2021 Baseline Variance
Children's Health Services, required by Condition 35	7,831,371	8,135,062	303,690
Rural Health Services, required by Condition 33	74,374,082	66,494,549	(7,879,533)
Behavioral Health Services, required by Condition 34	6,890,510	11,132,822	4,242,312
Population Health Improvement, required by Condition 36	2,994,045	2,791,083	(202,962)
Health Research & Graduate Medical Education, required by Condition 24	8,757,817	11,979,500	3,221,683
Region-Wide Health Information Exchange, required by Condition 8	452,359	398,282	(54,077)
<b>Total</b>	<b>101,300,184</b>	<b>100,931,299</b>	

Ballad's Baseline variances from the required amounts are also listed in Table 2, which also displays the Plan spending commitments and actual Plan spending during FY 2021 for each of the six plans required by Conditions 8, 23, 33, 34, 35, and 36 of the Virginia Order. Notwithstanding the fact that the spending and activity requirements were suspended for all of FY 2021, the required annual and 10-year total spending amounts were not changed for FY 2021. As stated on page 4 of this report, "The total spending commitment required by each of these conditions is not amended and shall not be reduced." Therefore, while Ballard could have curtailed Plan activities and spending at will, Ballard continued moving forward with Plan activities and spending. Table 2 reflects that spending and shows how Ballard's actual spending on Baseline and Plan activities compared to the commitments during FY 2021. For the year, Ballard met the required spending level for three plans: Children's Health, Population Health, and Health Research & Graduate Medical Education. Plan spending fell short for Rural Health, Behavioral Health, and the Health Information Exchange, with the sum of the three shortfalls totaling \$7,759,201 that will carry over to FY 2022.

Table 2: Ballard Health Plan Spending Commitments vs Actual - FY 2021

Plan Title	FY 2021 Baseline Variance* from Table 1	FY 2021 Plan Requirement	FY 2021 Plan Requirement + any Baseline Shortfall	FY 2021 Plan Actual	FY 2021 Variance
Children's Services	\$303,690	\$3,000,000	\$3,000,000	\$4,153,059	\$1,153,059
Rural Health Services	(7,879,533)	3,000,000	10,879,533	7,918,482	(2,961,051)
Behavioral Health Services	4,242,312	10,000,000	10,000,000	5,626,850	(4,373,150)
Population Health Improvement	(202,962)	5,000,000	5,202,962	9,470,697	4,267,735
Health Research & Graduate Medical Education	3,221,683	7,000,000	7,000,000	10,311,994	3,311,994
Region-wide Health Information Exchange	(54,077)	750,000	804,077	379,077	(425,000)
<b>Total</b>		<b>\$28,750,000</b>	<b>\$28,750,000</b>	<b>\$37,860,159</b>	

- \* Baseline variance that is negative indicates a shortfall compared to Baseline requirement; this amount is added to the Plan required spending amount found in Exhibit B.
- \* A positive result means the Baseline requirement has been met and all appropriate, new Plan-related spending will count against the required amount for that Plan.

**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.**

FY 2021 represents the third year of Ballad's initial set of six three-year required plans. Therefore, these plans were submitted for review and approved by the Commissioner prior to the beginning of fiscal year 2021. The initial plans were set to expire June 30, 2021, and a draft of the six replacement three-year plans was required to be submitted by April 1, 2021. However, Ballad requested a one-year extension of the approved plans due to the strain experienced by the system on operations during the COVID-19 pandemic, which required numerous revisions and applied to only the fourth (extension) year. The Commissioner granted conditional approval on February 2, 2021, for a one-year extension of the 2019-2021 three-year plans. Ballad updated its Plans and budgets to include fiscal year 2022. The new draft three-year plans are now due by April 1, 2022.

**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 review period, the Department's Cooperative Agreement Monitor, Tennessee COPA Monitor, and Health Authority Monitor reviewed Ballad's testing of its compliance with these provisions. The Monitors determined that Ballad was in compliance with Article V and Addendum 1 for FY 2021.

The COPA Monitor's annual report covering Ballad's FY 2021 can be found online: <https://www.tn.gov/content/dam/tn/health/documents/copa/FY21-COPA-Monitor-ANNUAL-REPORT.pdf>

**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 review period, Ballad updated the Department regularly on the status of payer negotiations. According to the COPA Monitor's annual report covering Ballad's FY 2021, "In fiscal year 2021 the COPA Monitor gave prospective approval for ten new or amended payor contracts", indicating these were in compliance with Addendum 1.

**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 HIE Plan, which ran through June 30, 2021, was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2021. A draft replacement plan was originally due for submission by April 1, 2021. However, the Commissioner's February 2, 2021, conditional approval of a one-year extension of the HIE Plan resulted in the draft replacement 3-year plan being due by April 1, 2022.

Ballad Health's FY 2021 Annual Report details the progress of the HIE plan on page 34, while observing some limitations faced due to COVID-19, such as the pause in establishing a steering committee. Ballad "continued to expand EpicCare Link to community providers", achieving "over 2,400 active users across 476 locations". Ballad's business development office continued to engage with the existing users on new features and to optimize functionality for end users. Ballad continued to provide data to OnePartner. Ballad also completed the implementation of Epic Hospital Go-Live across legacy Mountain States Health Alliance hospitals and prepared to launch phase 2 of Epic Go-Live in-home health and inpatient rehabilitation settings.

**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 portion of the region's primary care, behavioral health services, obstetrics care, and other ambulatory services are provided by entities 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 chose 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. The EpicCare Link add-on will allow Ballad to share patient data with other participating area providers not employed by Ballad.

Ballad also provides its patient data free of charge to the OnePartner HIE offering from the Kingsport, Tennessee-based Holston Medical Group. 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.

As of the end of FY 2021, Ballad has not yet demonstrated collaboration with independent physician groups on the development of a regional health information network. The Department 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.**

Per the suspension letter dated April 23, 2020, which was active throughout FY 2021: “This condition may be temporarily suspended; however, Ballad is encouraged to attempt to negotiate a risk-based component during any contract negotiation during the duration of the suspension.”

Ballad did not report any progress on this condition in the FY 2021 Ballad Health Annual Report.

**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.**

This item was suspended for the period under review, and the Department has not been notified by DMAS of any issues of non-compliance or failure to engage as required.

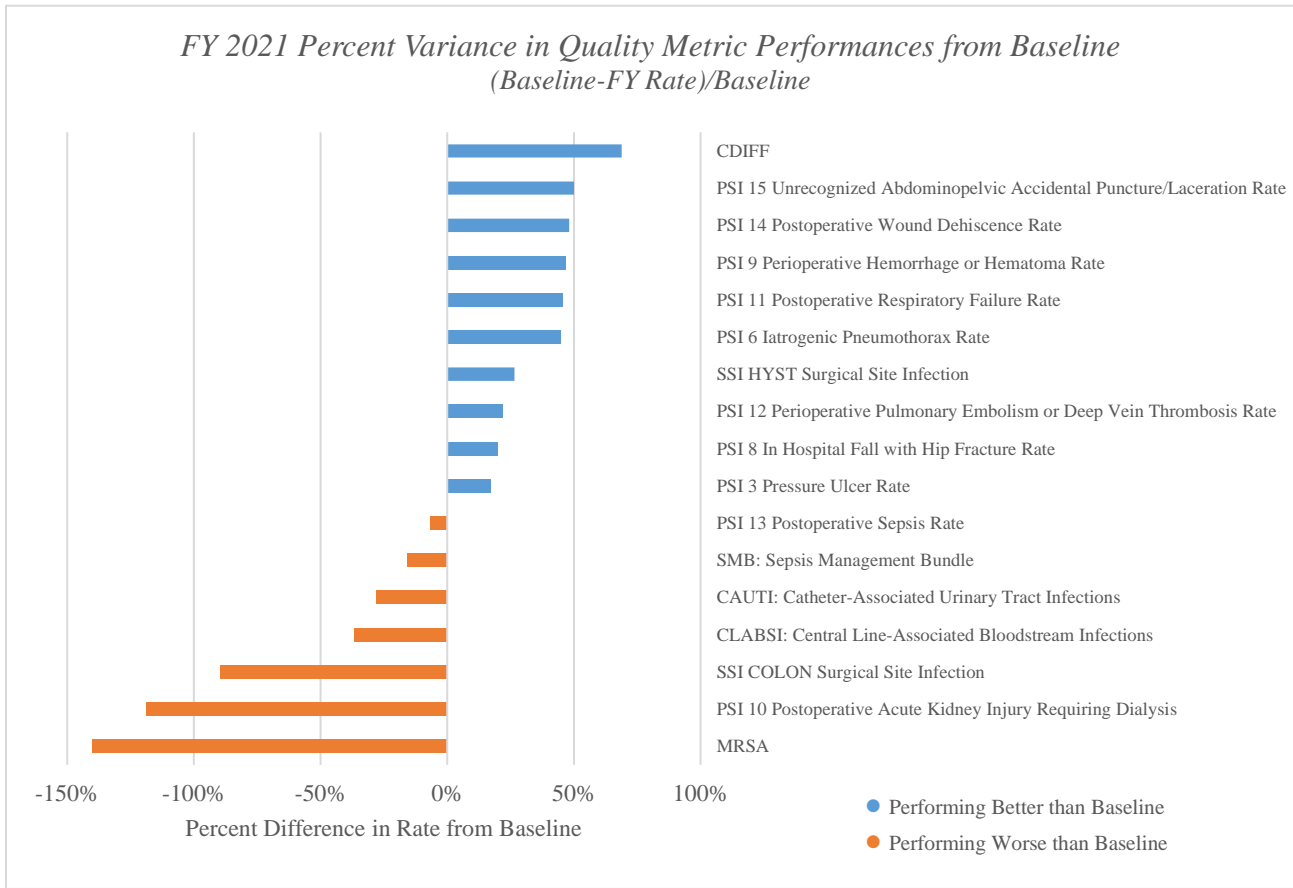
**Condition 12 sets forth requirements and standards for Ballad to develop a quality improvement program, including designation and monitoring of outcomes and measures, for the benefit of the residents of southwest Virginia. Ballad must also periodically report data to the Commissioner and TAP for review,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

Per the suspension letter dated April 23, 2020: “Required periodic data reporting and online posting may be temporarily suspended; Ballad will be required to submit, and post online, within 90 days after the period of emergency declared in Executive Order 51 expires or is terminated.” The period of emergency declared in Executive Order 51 ended June 30, 2021.

Ballad did not report the quarterly data during the suspension period, but included the quality metrics in the FY 2021 Annual Report. Ballad’s FY 2021 Annual Report cites the COVID-19 response as a significant challenge to achieving the Quality Target Measures. Additionally, staffing difficulties and diminished supplies impacted quality outcomes.

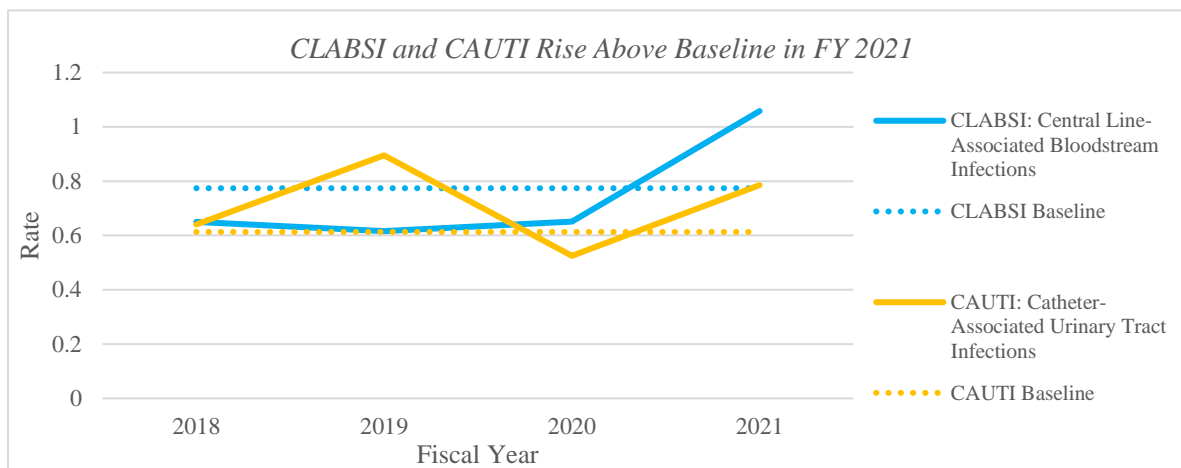
According to the Annual report, 10 out of 17 quality target measures performed at the same rate or better than baseline (58.8%). Chart 1 graphically displays the percentage variance from baseline for each of these metrics. Additionally of note, 11 of the 17 metrics worsened between FY 2020 and FY 2021.

Chart 1. FY 2021 Percent Difference in Quality Metric Rate Performances from Baseline.



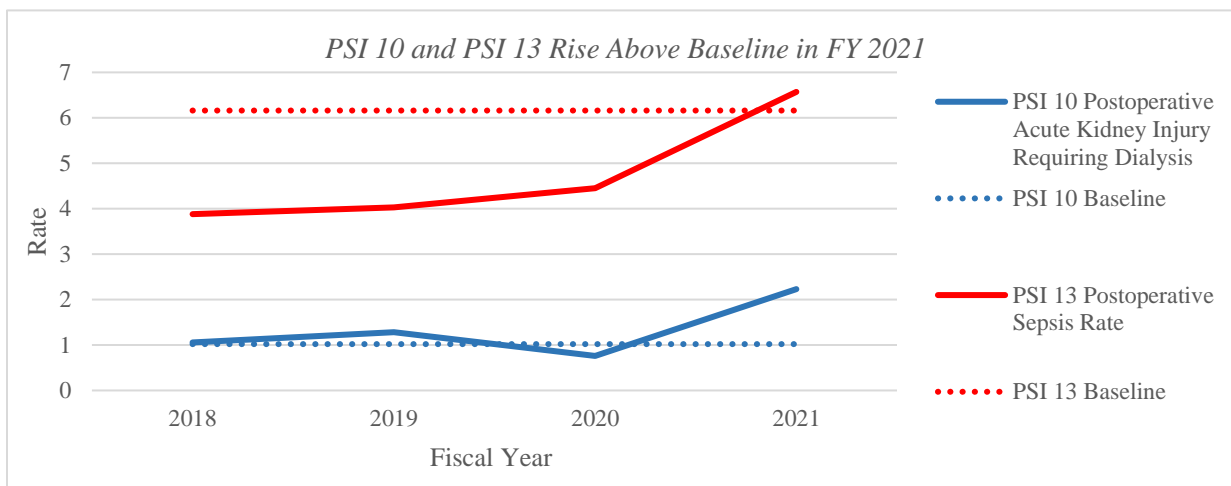
Five metrics that were performing better than baseline in FY 2020 performed worse than baseline in FY 2021: PSI 10, PSI 13, CLABSI, CAUTI, and SMB (Sepsis Management Bundle). Charts 2 and 3 visualize these changes.

Chart 2. CLABSI and CAUTI Rise Above Baseline in FY 2021.



A point above the baseline (dotted) line indicates that these rates are higher than preferred, and thus performing worse than baseline. If the rate is below the baseline, it indicates that performance is better than baseline.

Chart 3. PSI 10: Postoperative Acute Kidney Injury Requiring Dialysis and PSI 13: Postoperative Sepsis Rate Rise Above Baseline in FY 2021.



Six metrics improved in FY 2021: PSI 3 - Pressure Ulcer Rate, PSI 14 - Postoperative Wound Dehiscence Rate, PSI 15 - Unrecognized Abdominopelvic Accidental Puncture/Laceration Rate, SSI (Surgical Site Infection) COLON, SSI HYST, and CDI/F (Clostridium difficile or C. difficile). PSI 3 and CDI/F have seen impressive downward trends since FY 2018, as illustrated in Charts 4 and 5.



Charts 4 & 5. PSI 3: Pressure Ulcer Rate and CDIFF have improved consistently since FY 2018.

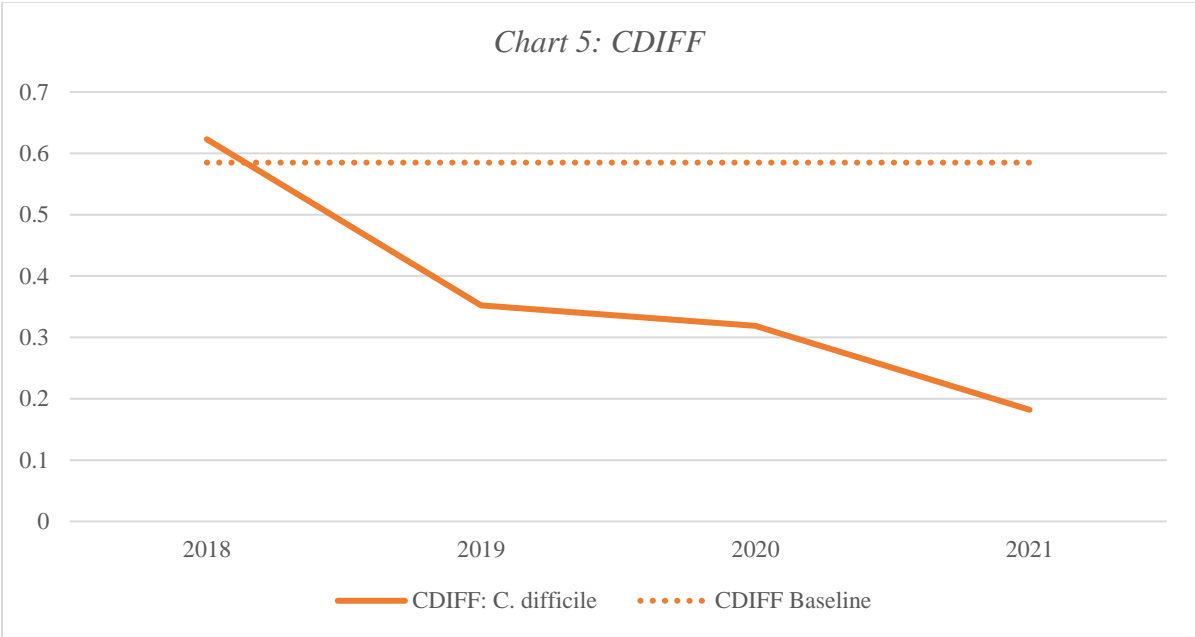
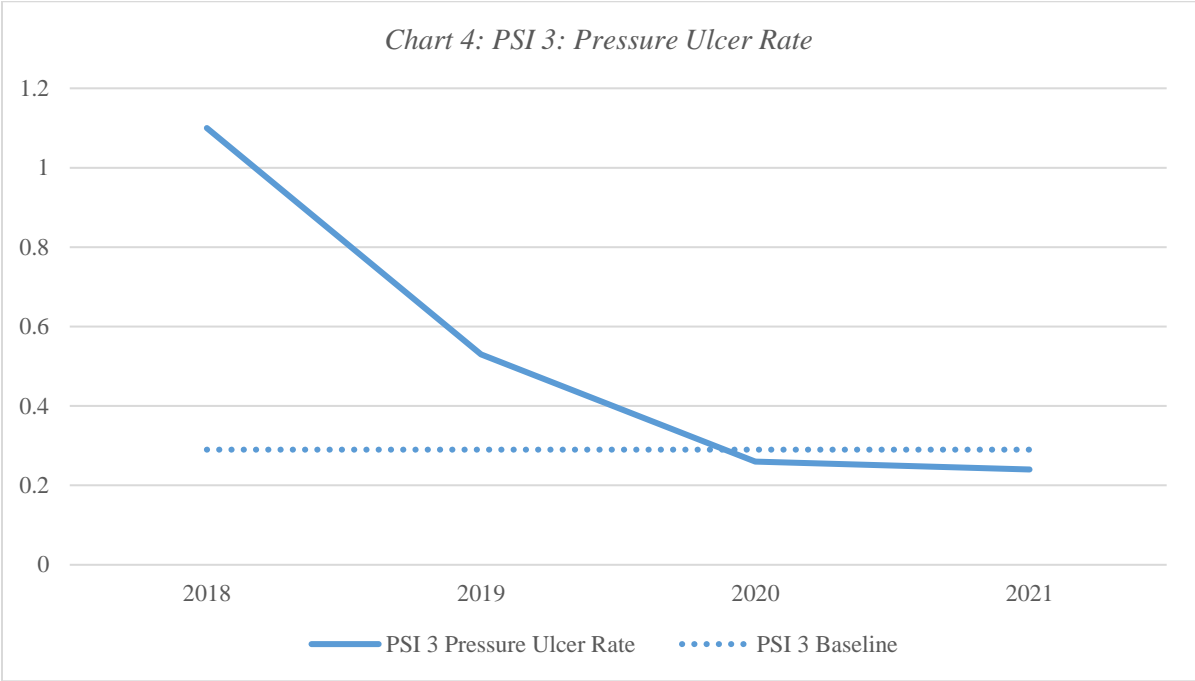


Table 3 summarizes the quality metrics data provided by Ballad from FY 2018 through FY 2021.

Table 3: Summary of Quality Metric Data Provided by Ballad Health from Fiscal Year 2018 to 2021

Metric	Baseline	Compared to Baseline				Desired Direction	Change from 2020-2021	Trendline 2021 Better/Worse than Reset Baseline
		2018	2019	2020	2021			
PSI 3: Pressure Ulcer Rate	0.29	1.1	0.53	0.26	0.24	↓	↓	
PSI 6: Iatrogenic Pneumothorax Rate	0.38	0.23	0.13	0.15	0.21	↓	↑	
PSI 8: In Hospital Fall with Hip Fracture Rate	0.1	0.01	0.08	0.05	0.08	↓	↑	
PSI 9: Perioperative Hemorrhage or Hematoma Rate	4.2	1.76	1.41	1.45	2.24	↓	↑	
PSI 10: Postoperative Acute Kidney Injury Requiring Dialysis	1.02	1.06	1.28	0.76	2.23	↓	↑	
PSI 11: Postoperative Respiratory Failure Rate	14.4	8.34	7.56	6.74	7.86	↓	↑	
PSI 12: Perioperative Pulmonary Embolism or Deep Vein Thrombosis Rate	5.35	3.51	3.16	3.5	4.18	↓	↑	
PSI 13: Postoperative Sepsis Rate	6.16	3.88	4.03	4.45	6.57	↓	↑	
PSI 14: Postoperative Wound Dehiscence Rate	2.2	0.99	1.48	1.34	1.14	↓	↓	
PSI 15: Unrecognized Abdominopelvic Accidental Puncture/Laceration Rate	0.9	0.98	0.27	0.84	0.45	↓	↓	
CLABSI: Central Line-Associated Bloodstream Infections	0.774	0.65	0.616	0.651	1.058	↓	↑	
CAUTI: Catheter-Associated Urinary Tract Infections	0.613	0.64	0.895	0.525	0.785	↓	↑	
SSI COLON Surgical Site Infection	1.166	1.9	2.258	2.23	2.210	↓	↓	
SSI HYST Surgical Site Infection	0.996	0.61	0.000	0.79	0.731	↓	↓	
MRSA: Methicillin-resistant Staphylococcus aureus	0.04	0.054	0.090	0.056	0.096	↓	↑	
CDIFF: C. difficile	0.585	0.623	0.352	0.319	0.182	↓	↓	
SMB: Sepsis Management Bundle*	62.8%		62.7%	63.1%	52.9%	↑	↓	

\*SMP Baseline is from Ballad's internal goal

A red cell means performing worse than baseline.

Note: Fiscal Year (FY) 2018 data is taken from Ballad's FY 2019 Annual Report. The FY 2019 Annual Report does not specify the period covered, but the previous reporting for FY 2018 covers February 1, 2018 through June 30, 2018, which was the first few months after the merger. Additionally, the baseline numbers for FY 2018 contained in the FY 2019 report have been updated from the previously reported data.

**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 acceptable accreditation during the FY 2021 reporting period. Ballad Health had no immediate jeopardy findings during the Reporting Period.

**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 the Department and the Tennessee Department of Health (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.

Pages 30 and 31 of Ballad Health's FY 2021 Annual Report includes the following information related to Ballad's provision of charity care:

*Ballad Health spent \$80,193,458 in FY2021 for Total Charity (Charity Care + Unreimbursed TennCare and Medicaid)*

*There was a shortfall from the adjusted baseline of \$28,574,973, which was attributed to the material decline in volumes tied to both COVID-19 and efforts by Ballad and area physicians, and the ongoing expansion of Medicaid in Virginia.*

Ballad's total charity care equates to 3.66% of its total operating revenue of \$2,190,589,872, found on page 47 of the FY 2021 Annual Report.

Table 4. Ballad Health Self-Reported Charity and Reduced Price Care - FY 2021

Base Charity	FY17 Baseline	FY17 Baseline Adjusted by FY18 HIA*	FY17 Baseline Adjusted by FY19 HIA*	FY17 Baseline Adjusted by FY20 HIA*	FY17 Baseline Adjusted by FY21 HIA*	FY21 Actual as of 6/30/2021
Charity Care	\$ 35,034,403	\$ 36,067,918	\$ 37,204,057	\$ 38,413,189	\$ 39,431,139	\$ 31,436,459
Unreimbursed TennCare and Medicaid	61,605,896	63,423,270	65,421,103	67,547,289	69,337,292	48,756,999
<b>Total</b>	<b>\$ 96,640,299</b>	<b>\$ 99,491,188</b>	<b>\$ 102,625,160</b>	<b>\$ 105,960,478</b>	108,768,431	<b>\$ 80,193,458</b>
				<b>Variance from Baseline</b>		<b>\$ (28,574,973)</b>
*Hospital Inflation Adjustment (HIA) = CMS . . . . .		2.95%	3.15%	3.25%	2.65%	

**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 the Department 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 review period.

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

In March 2020, Ballad Health 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. This suspension issued April 23, 2020, lasted until June 30, 2021.

Ballad submitted a Notice of Material Adverse Event on March 19, 2021 of the Tennessee Supreme Court's ruling declining to review the appellate court's decision *Highlands Physicians, Inc., v. Wellmont Health System*, No. E2019-00554-COA-R3-CV. The decision resulted in a significant expense to Ballad that was previously anticipated.

**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 2021.

**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.**

This condition was suspended during the reporting period, per the Suspension letter dated April 23, 2020. Ballad did not report any updates in their FY 2021 Annual Report.

**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 covers the first five years of operation.

**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 reported that there were no reductions of 50 or more employees during FY 2021.

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

This condition was suspended during the reporting period, per the Suspension letter dated April 23, 2020. Ballad did not report any updates in their FY 2021 Annual Report.

**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.**

Plan related spending requirements were suspended during this reporting period. However, Ballad continued many HR/GME Plan-related activities. Ballad shared updates during quarterly meetings and provided some details of HR/GME Plan progress in the FY 2021 Annual Report, beginning on page 20. Ballad funded grants for the ETCU Center for Rural Health Research, Ballad Health Strong Brain Institute, and the Medical Legal Partnership. Academic research was continued including the STRONG Accountable Care Community (ACC) evaluation, an examination of the STRONG pregnancy, STRONG Starts, and STRONG LINK programs, and an examination of the competitive dynamics of small hospital markets in conjunction with Harvard Medical School (pages 26-27). A list of Published Report from Research Projects begins on page 28 of the Annual Report.

**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 HR/GME Plan, which ran through June 30, 2021, was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2021. A draft replacement plan was originally due for submission by April 1, 2021. However, the Commissioner's February 2, 2021 conditional approval of a one-year extension of the HR/GME Plan resulted in the draft replacement 3-year plan being due by April 1, 2022.

In spite of the fact that Plan related spending requirements were suspended during this reporting period, Ballad continued many HR/GME Plan-related activities. Ballad shared updates during quarterly meetings and provided some details of HR/GME Plan progress in the FY 2021 Annual Report, beginning on page 20.

**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 HR/GME Plan, which ran through June 30, 2021, was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2021. A draft replacement plan was originally due for submission by

April 1, 2021. However, the Commissioner's February 2, 2021 conditional approval of a one-year extension of the HR/GME Plan resulted in the draft replacement 3-year plan being due by April 1, 2022.

In spite of the fact that Plan related spending requirements were suspended during this reporting period, Ballad continued many HR/GME Plan-related activities. Ballad shared updates during quarterly meetings and provided some details of HR/GME Plan progress in the FY 2021 Annual Report, beginning on page 20. According to Ballad's FY 2021 Annual Report, "no publications have been based on research directly related to an approved HR/GME plan" in FY 2021. Ballad contributed to an assortment of publications listed on pages 28 to 30 in the report.

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

This requirement was suspended during the FY 2021 reporting period. However, Ballad discussed several activities related to development of a common clinical platform and health information exchange beginning on page 34 of Ballad's FY 2021 Annual Report. As discussed in relation to Conditions 8 and 9 of this report, Ballad continued its phased deployment of Epic across the Ballad system. Ballad also reached 246 site deployments connecting community providers to EpicCare Link.

**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.**

This requirement was suspended during the reporting period. Ballad did not provide updates on this condition in the FY 2021 Annual Report. Department staff is not aware of any instances of non-compliance with this Condition.

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

Ballad has maintained compliance with this condition. Ballad's Johnson City Medical Center, Holston Valley Medical Center, and Bristol Regional Medical Center continue to be considered tertiary referral hospitals. Ballad has consolidated some services and departments between hospitals, raising widespread concerns from the public about the perceived loss of access and accessibility at local hospitals.

Review of any potential service line changes or deletions is required under Condition 27. All service line changes or deletions proposed by Ballad are scrutinized for compliance with Condition 27 and all other applicable requirements of the Virginia Order. Maintaining and improving appropriate access to care remains a Departmental priority and is integral to its active supervision efforts.

**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. The next physician needs assessment will be due in FY 2022. Ballad shared with the Department 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.**

Submission of new plans was suspended during this reporting period. 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 2021. The plan was set to expire June 30, 2021, and a draft replacement plan was expected for submission by April 1, 2021. However, the Commissioner's February 2, 2021 conditional approval of a one-year extension of the RHP resulted in the draft replacement three-year plan being due by April 1, 2022.

However, Ballad shared updates during quarterly meetings and detailed progress in the FY 2021 Annual Report on page 33. Several examples are listed below.

- To expand access to primary care practices, Ballad Health hired seven new and/or replacement primary care providers, including one in Lebanon, Virginia. The other six are based in Tennessee.
- Ballad opened a cardiology outreach clinic in Pennington Gap, Virginia. Additionally, Ballad hired various Physician Specialists to meet rural access needs, including:

- Pediatric Endocrinologist
  - Pulmonary Nurse Practitioner
  - Obstetric Generalist
  - Cardiology Advanced Practice Providers
- Ballad expanded virtual care services by establishing a cash-based virtual urgent care service and expanding virtual capabilities for Behavioral Health providers within primary care practices.

**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.**

Submission of new plans was suspended during this reporting period. 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 2021. The plan was set to expire June 30, 2021, and a draft replacement plan was expected for submission by April 1, 2021. The Commissioner's February 2, 2021 conditional approval of a one-year extension of the BHP resulted in the draft replacement three-year plan being due by April 1, 2022.

However, Ballad shared updates during quarterly meetings and detailed progress in the FY 2021 Annual Report on page 32. Screening, Brief Intervention and Referral to Treatment (SBIRT) efforts were paused due to emergency department volumes. Several positions returned from furlough, and some turnover was experienced. The Strong Futures Outpatient Clinic opened in May, and the Strong Futures temporary living center opened in June 2021.

**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.**

Submission of new plans was suspended during this reporting period. Ballad's first three-year Children's Health Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2021. The plan was set to expire June 30, 2021, and a draft replacement plan was expected for submission by April 1, 2021. The Commissioner's February 2, 2021 conditional approval of a one-year extension of the CHP resulted in the draft replacement three-year plan being due by April 1, 2022.

However, Ballad shared updates during quarterly meetings and detailed progress in their FY 2021 Annual Report beginning on page 34. Ballad formed the Niswonger Children's Network, which will work to identify next steps and initiate planning related to children's health services to elevate the level of care for children in the region. Ballad opened a new pediatric emergency department at Bristol Regional Medical Center in October 2020. Ballad collaborated with the Kingsport Visioning Committee, announcing the establishment of a new pediatric emergency department and a women's and children's Center of Excellence at



Indian Path Hospital in Kingsport, Tennessee. Ballad also recruited for several provider positions based on updated needs. Efforts to “Assess, Align and Continuously Develop Pediatric Trauma Needs Across the System” were paused due to COVID.

**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.**

Submission of new plans was suspended during this reporting period. Ballad’s first three-year Population Health Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2021. The plan was set to expire June 30, 2021, and a draft replacement plan was expected for submission by April 1, 2021. The Commissioner’s February 2, 2021 conditional approval of a one-year extension of the PHP resulted in the draft replacement three-year plan being due by April 1, 2022.

However, Ballad shared updates during quarterly meetings and detailed progress in their FY 2021 Annual Report beginning on page 35, including the following:

- Hired several positions to support various programs, including 12 new Community Health Workers (CHW) in tandem with the adoption of the PennMed Community Health Worker high fidelity model. CHW were connected with vaccine initiatives and participated in Tennessee and Virginia workgroups.
- Made progress in creating a population health longitudinal database including finalizing the study design and meeting with the East Tennessee State University Center for Rural Health Research and Policy. Ballad is working to secure a Memorandum of Understanding with Virginia Commonwealth University.
- Launched the Appalachian Highlands Care Network (AHCN) in September 2020, and enrolled 1,700 patients. Also enrolled 250 patients to care management and connected 160 patients with CHWs.

**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 has confirmed that they are meeting the requirements in Condition 38. The Board and Committee memberships have remained in compliance, based on a staff review of changes.

**Condition 39 requires that the Ballad Chief Executive Officer (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 the Department.

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

Ballad has not closed a facility in Virginia during the period of this review.

**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 Addiction and Recovery Treatment Services (ARTS) Program.**

Ballad continued its relationship with the Virginia DMAS ARTS Program during the review period. Ballad states in its FY 2021 Annual Report that there was no ARTS project during FY 2021. Ballad plans to work collaboratively with the ARTS program as it rolls out the Strong Futures and Medication Assisted Treatment (MAT) initiatives in its emergency departments.

**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 active throughout the review period. Ballad's FY 2021 Annual Report contains an extensive collection of efforts of the Council and its eight sub-committees, beginning on page seven.

**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.

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

This requirement was suspended during the reporting period.

**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 to the Department 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 is rarely of benefit to Tennessee residents. Similarly, the Behavioral Health Women's Addiction Treatment Center in Greeneville, Tennessee is not readily 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. The Department 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.**

On March 12, 2020, the Governor issued Executive Order 51 2020, in which he "declared a state of emergency due to COVID-19." Ballad subsequently 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 outlined in the suspension Letter dated April 23, 2020, for the length of the emergency period plus a defined recovery period, as permitted by Condition 49 of the Order.

The Governor extended the state of emergency until allowing it to expire on June 30, 2021. Therefore, the Commissioner's approval of the suspension was automatically lifted. On July 1, 2021, Ballad entered the recovery period, which was to last from 30 to 90 days, depending on the requirement.

Ballad submitted several requests for amendments and waivers to the Cooperative Agreement. These included a request received by the Department on January 8, 2021 to add expenses related to the reopening of Lee County Community Hospital to the Rural Health plan (which was still pending at the end of FY 2021), a request received on January 11, 2021 to extend the six approved three-year plans by one year (approved February 4, 2021), and an amendment request to add spending related to Miracle Field in Kingsport, Tennessee to the Children's Health Plan (approved on June 9, 2021).

## **Review of Cooperative Agreement Complaints**

The Department receives Cooperative Agreement-related complaints by phone, email, or through the VDH's online feedback form. The Department's 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. Additional complaints related to Ballad may have been received by the Department that were unrelated to the Cooperative Agreement, including complaints related to the Commonwealth's licensure or federal certification requirements at Ballad facilities. Complaints not related to the Cooperative Agreement were routed to the office or agency responsible for regulatory oversight of the subject area of each complaint.

VDH reviewed four complaints during the review period. Two complaints were unrelated to Ballad or its service area. One anonymous hotline call did not provide enough information to determine if it was related to a Ballad facility. The final review was of a complaint lodged with the Tennessee COPA Monitor about staffing issues. No Cooperative Agreement issues were involved.

## **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 censuses, 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 independently.

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 the local City of Norton area, including consolidation, reallocation, and new service development.

Based on information provided by Ballad during the period, a significant portion of the quality metrics are not meeting baseline rates. In FY 2021, seven (41.2%) of the 17-quality metrics are performing worse than baseline. Four metrics have performed worse than baseline for two of the three full years that quality data is available for Ballad (PSI 10: Postoperative Acute Kidney

Injury Requiring Dialysis, CAUTI: Catheter-Associated Urinary Tract Infections, SSI (Surgical Site Infection) COLON, and MRSA). Two quality metrics (C.Diff and PSI 3: Pressure Ulcers) have maintained a decline in rate below baseline since 2018, while six metrics improved between FY 2020 and FY 2021.

Ballad Health was at or above baseline for 22 of 25 Access Measures, improved 18 measures year over year, and saw decline in only 3 measures (Follow-up after hospitalization for mental illness—7 days, and Effective Continuation Phase Treatment). Three of the original 28 measures remain unreported due to “no agreed-upon real-time data sources” according to Ballad’s FY 2021 Annual Report. 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 (LCH), on October 1, 2019. This was a temporary measure to provide essential services to the citizens of the area during renovation of the LCH facility. Construction and renovation work on LCH was interrupted by the COVID-19 epidemic in March 2020. Ballad resumed renovation work on the future Lee County Community Hospital (LCCH) in September 2020. Ballad closed on the purchase of the former LCCH building on June 30, 2021, the last day of FY 2021. The renovated LCCH was scheduled to re-open as a Critical Access Hospital on July 1, 2021; the UCC was to close on the same day.

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 approval of the Cooperative Agreement. Ballad submitted a request on January 8, 2021 to count the spending associated with the opening of the urgent care center and reopening of the Lee County Community Hospital to the Rural Health Plan, which was discussed throughout FY 2021, and remains an ongoing dialogue between Ballad and the Department for the period covered by this report.

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 represents continuing additional operating cost each year over the baseline year. Ballad should meet the \$70 million commitment by FY 2026.

Ballad has continued the implementation of its six comprehensive plans related to improving population health, rural health, health research and graduate medical education, health information exchange, children’s health, and access to behavioral health services. Ballad was scheduled to update these plans by the end of the third year, with input from both TDH and the Department. However, the Commissioner’s approval of a one-year extension of the existing plans pushes the due date for the new plans to the end of the fourth year, June 30, 2022. Ballad continued its backbone role for the area-wide ACC with over 250 member organizations. The ACC has chosen to focus on STRONG Children and Families 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 in June 2021 opened a residential center in Tennessee for pregnant women experiencing homelessness and/or substance abuse. This center is being funded through a grant from the state of Tennessee which precludes access to Virginia residents during the term of the grant.

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. Ballad has engaged in value-based contracts when possible and as required by the Virginia Order, to further incentivize lower costs and higher quality. However, no new value-based contracts were added during FY 2021.

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 three of the six required categories during FY 2021. The total of the three shortfalls was \$7,759,201, which is the dollar amount Ballad will place into the previously created Board-designated fund.

Ballad Health opened a new pediatric emergency department at Bristol Regional Medical Center in Bristol, Tennessee in September 2020. This department is part of the Niswonger Children's Health Network and shortens the commute for nearby residents in both Tennessee and Virginia who would otherwise have to travel to Johnson City Medical Center for most pediatric emergency care, 40 minutes away.

To address the cost of care in the region, Ballad Health launched the Appalachian Highlands Care Network (AHCN). The FY 2021 Annual Report notes: "The program provides free ongoing prevention, primary care, diagnostics, emergency and inpatient services to enrolled members identified by care navigators embedded in community clinics, emergency department and other care sites throughout the region." Over 1,700 members were enrolled in the AHCN by the end of FY 2021.

The Strong Pregnancies program pilot sites screened and enrolled their first participants in May of 2021. This program screens pregnant people as early as possible and connect them to a community health worker assigned to help resolve any identified needs through connecting enrollees to Ballad Health and community services. This program feeds into the Strong Starts program, which assists the family for up to five years to ensure the mother and baby stay healthy and the child is prepared to successfully enter kindergarten. The network currently consists of 43 partners and continues to grow.

### **Commissioner's Decision**

**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; therefore, the fourteen reasons given for the original approval of the Cooperative Agreement remain valid. Ballad has either corrected deficiencies identified during FY 2021 or has developed a plan to correct them. Based on these findings, the Commissioner determines that the benefits of the Cooperative Agreement through Fiscal Year 2021, ending on June 30, 2021, continue to outweigh the disadvantages attributable to a reduction in competition that have resulted from the Cooperative Agreement.**