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

*for the Period of July 1, 2021 – June 30, 2022*

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.*

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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), 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 fourth annual report and decision, intended to satisfy the requirement for the Ballad Health Cooperative Agreement (Cooperative Agreement) covering the period July 1, 2021, through June 30, 2022. 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/

### *New COVID-19 Pandemic Response Due to Ongoing Outbreaks*

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 period ended on June 30, 2021, due to and in conjunction with the end of the state of emergency previously declared by the Governor.

In response to a new request from Ballad Health, permitted under Condition 49 of the Order, the Commissioner issued a second suspension letter on August 27, 2021, which remained active through December 31, 2021. The scope of the second suspension was smaller than the first suspension and applied only to all or portions of Conditions 12, 22, 27, 40, and the Quantitative Measures required by 12 VAC 5-221-100. Exhibit 1 contains these four Conditions and a summary of the quantitative measures suspended. The portions of Condition 27 that were **not** suspended have been subdued to better demonstrate the intentionally limited scope of the suspension.

*Exhibit 1*

Second Suspension of The Virginia Order Due to COVID-19
August 27, 2021 through December 31, 2021

***Suspended Conditions and Requirements***

12. The New Health System shall develop a robust quality improvement program, to include outcomes and measures, consistent with the aim of improving the health and well-being of the residents of southwest Virginia. The quality outcomes and measures will be developed with the input and approval of the Commissioner. The New Health System shall establish annual priorities related to quality improvement applicable to all facilities within the first six months of the closing date of the merger and publicly report quality measures related to the annual priorities. The New Health System shall track the performance of the health system in meeting these quality priorities, outcomes and measures at both the system and individual hospital levels. The New Health System shall post the quality measures and actual performance against the measures on its website accessible to the public. The New Health System shall timely report and include on its website its performance compared to the Medicare quality measures

including readmission statistics. The New Health System shall give notice to the Authority of the metrics that it is prioritizing and will include input from the Authority in establishing or modifying its priorities. A monthly report, at the individual facility as well as system level, shall be presented to the Commissioner and the Technical Advisory Panel.

22. The New Health System shall combine the best of the career development programs of Wellmont and Mountain States in order to ensure maximum opportunity for career enhancement and training.

27. All hospitals operated by the Applicants on the Approval Date shall remain operational as clinical and health care institutions for at least five years. "Clinical and health care institutions" may include, but are not limited to, acute care hospitals, behavioral health hospitals, rehabilitation hospitals, freestanding emergency rooms, surgery centers, skilled nursing facilities, assisted living centers, and any combination thereof. Immediately from the Approval Date and during the life of the cooperative agreement, the New Health System shall continue to provide access to health care services in the community, which may include continued operation of the hospital, new services as defined by the New Health System, and other investment in outpatient health care and preventive services based on the demonstrated need of the community. The New Health System may adjust scope of services or hospital service lines, or repurpose any hospital. In the event the New Health System repurposes any hospital or adjusts scope of services or service lines, it shall continue to provide essential services in the city or county where the hospital is located and in any contiguous city or county. Prior to adjusting the scope of services or service lines or repurposing any hospital, the New Health System shall provide the Commissioner with nine months advance notice. Within 30 days of such notification, the New Health System shall submit a plan to the Commissioner for approval detailing how essential services will continue to be provided in the city or county in which the hospital is located and in any contiguous city or county. The Commissioner's review of the plan shall be performed in accordance with Condition 4. To be approved, the plan shall (A) have been provided to the Commissioner within 30 days of timely notice that such adjustment in scope of service or service lines or repurposing was to occur, (B) demonstrate that the proposed action is consistent with, and would not adversely impact, the Population Health Plan, the Rural Health Services Plan, the Children's Health Services Plan, and the Behavioral Health Services Plan, (C) set forth how essential services will continue to be provided in the Virginia city or county where the hospital facility is currently located, as well as in any contiguous Virginia city or county, and (D) demonstrate how population health will be improved for the people in the Virginia service area. The plan shall include milestones and outcome metrics. If the New Health System desires to repurpose a hospital emergency department or consolidate trauma service lines, the plan submitted to the Commissioner shall be developed in coordination with the Southwest Virginia Emergency Medical Services Council and shall also address emergency medical services transport times and assurance of appropriate patient care.

*[Note: any changes made by Ballad during the suspension period must be temporary and only during the suspension period. Any changes must be unwound within 30 days of the end of the suspension period.]*

The New Health System shall not close facilities or discontinue services in such a manner that would affect the ability of Medicaid managed care organizations to

meet network adequacy and access requirements, such as distance and drive time parameters.

For purposes of this condition, "service lines" means the following service lines at a hospital: Orthopedics, Pediatrics, Surgery, Obstetrics/Gynecology, Cardiovascular/Heart, Cancer, Emergency Medicine, Neurology/Neurosurgical, Psychiatric/Behavioral Health, Neonatal, and Trauma.

For purposes of this condition, the following services are considered "essential services:" Emergency room stabilization for patients;

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

If an acute care hospital is opened in Lee County, and subsequently fails or ceases to operate, the New Health System shall provide essential services for Lee County based upon reasonable terms established by agreement between the Lee County Hospital Authority and the New Health System. Such terms shall include the appropriate access to space, located within the existing hospital facility, based upon reasonable terms. If an acute care hospital is not open and operational under a partnership with the Lee County Hospital Authority by December 31, 2018, the New Health System shall provide essential services in Lee County based upon reasonable terms established by agreement between the Lee County Hospital Authority and the New Health System until such time as a hospital is open and fully operational.

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

*Additionally, VDH agreed to not establish any new quantitative measures required by Virginia Code. The Technical Advisory Panel would not meet during the period. Expected reporting of Quarterly and Annual quantitative measures are to be submitted with the first quarterly report at least 60 days following the end of the suspension period.*

### *Content of the Report*

This report constitutes the Commissioner's annual assessment covering Ballad's Fiscal Year (FY) 2022. Information available to the Commissioner about Ballad's activities subsequent to June 30, 2022, 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.

### *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."[2]

### *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 aspirational but undefined, and unmet, 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.

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

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 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, conditionally approving the application for a cooperative agreement filed by Mountain States and Wellmont. The Virginia Order and its 49 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. Three Monitors, one each representing the Virginia Department of Health, the Tennessee Attorney General's Office, and the Southwestern Virginia Health

Authority, are directly involved in the active supervision of Ballad and the Cooperative Agreement. The Monitors routinely work in concert and interact directly with the members of Ballad's Executive Team, providing a regular and as-needed onsite presence. The Monitors review Ballad activities, submissions, and compliance with requirements to form coordinated recommendations to the states related to the Virginia Order and Tennessee COPA/TOC.

**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.

## Annual Review of the Cooperative Agreement

### *Ballad's FY 2022 Amended 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 2022 Annual Report and FY 2022 COPA Compliance Office Annual Report via email on October 31, 2022. The Department received Ballad's Annual Report amendments on March 21, 2023, focusing on quality metrics reporting. Throughout this document, any reference to Ballad's FY 2022 Annual Report refers to the Amended FY 2022 Annual Report. The reporting period for Ballad's FY 2022 Annual Report covers the timeframe of July 1, 2021, through June 30, 2022.

Ballad's FY 2022 annual reports and an Executive Summary 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 Health Alliance (Mountain States) and Wellmont Health System (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.**

Ballad provided its FY 2022 Baseline and Plan spending data to the Department at the same time as it was provided to Tennessee.

The Virginia Order requires Ballad 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. Ballad'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 Ballad.

Ballad's FY 2022 actual Baseline spending for each of the six required areas, compared to its Baseline requirement, is shown in Table 1. Note that for Tables 1 and 2, each Plan area has annual Baseline and Plan spending requirements that are independent of the other Plan areas. The sum of the Baseline spending variances is not calculated or displayed, as the figure is contextually irrelevant.

Ballad's verified actual Baseline spending for FY 2022 resulted in a shortfall in two of the six areas: Rural Health ($5,109,870), and Health Information Exchange ($326,215). The amount of each shortage is required to be added to Ballad's required Plan spending level in the same category for the year.

*Table 1. Ballad's Baseline Spending Levels, FY 2022*

| **Plan Title** | **FY 2022 Baseline** | **FY 2022 Actual Baseline Spend** | **FY 2022 Baseline Variance** |
|---|---|---|---|
| Children's Health Services, required by Condition 35 | $7,831,371 | $9,486,195 | $1,654,824 |
| Rural Health Services, required by Condition 33 | 74,374,082 | 69,264,212 | (5,109,870) |
| Behavioral Health Services, required by Condition 34 | 6,890,510 | 11,519,491 | 4,628,981 |
| Population Health Improvement, required by Condition 36 | 2,994,045 | 3,696,181 | 702,136 |
| Health Research & Graduate Medical Education, required by Condition 24 | 8,757,817 | 10,490,513 | 1,732,696 |
| Region-Wide Health Information Exchange, required by Condition 8 | 452,359 | 126,144 | (326,215) |
| **Total** | **$101,300,184** | **$104,582,736** | |

Table 2 displays the calculation of Ballad's Plan Spending variances for FY 2022. Actual Plan spending for each of the six plans required by Conditions 8, 23, 33, 34, 35, and 36 of the Virginia Order is subtracted from the combination of Ballad's Baseline spending shortfalls from Chart 1 and the required FY 2022 Plan spending amounts.

*Table 2: Ballad Health Plan Spending Commitments vs Actual - FY 2022*

| | | | Fiscal Year 2022 - Fiscal Year Four | | | |
|---|---|---|---|---|---|---|
| Plan | Ten-Year Commitment | FY 2022* Baseline Excess (Shortfall) | FY 2022 Actual Spending | FY 2022 Virginia Plan Commitment | FY 2022 Plan Excess (Shortfall) | FY 2022 Excess (Shortfall) |
| Children's Services | $27,000,000 | $1,654,824 | $3,761,303 | $4,667,000 | ($905,697) | ($905,697) |
| Rural Health Services | 28,000,000 | (5,109,870) | 20,285,059 | 5,000,000 | 15,285,059 | $10,175,189 |
| Behavioral Health Services | 85,000,000 | 4,628,981 | 4,317,593 | 9,333,000 | (5,015,407) | ($5,015,407) |
| Population Health Improvement | 75,000,000 | 702,136 | 6,901,261 | 6,667,000 | 234,261 | $234,261 |
| Health Research & Graduate Medical Education | 85,000,000 | 1,732,696 | 9,271,952 | 8,667,000 | 604,952 | $604,952 |
| Region-wide Health Information Exchange | 8,000,000 | (326,215) | 252,068 | 333,000 | **(80,932)** | ($407,147) |
| **Totals[1]** | **$308,000,000** | | **$44,789,236** | **$34,667,000** | | **Shortfalls Sum** **($6,328,251)** |

* 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.

Table 3 displays the FY 2022 Plan spending results adjusted for prior years' spending. The result from Chart 2 is adjusted by the amount of the prior year's Plan spending excess or shortfall. For the year, Ballad met the required Plan spending level for four plans: Children's Health, Rural Health, Population Health, and Health Research & Graduate Medical Education. Plan spending fell short for Behavioral Health and the Health Information Exchange. The sum of the two shortfalls is $4,804,704.

*Table 3: Ballad Health Final Plan Spending Variances - FY 2022*

| Plan | FY 2022 Excess (Shortfall) | Prior Year Excess (Shortfall) | Final Excess (Shortfall) |
|---|---|---|---|
| Children's Services | ($905,697) | $1,820,059 | $914,362 |
| Rural Health Services | $10,175,189 | ($2,663,052) | $7,512,137 |
| Behavioral Health Services | ($5,015,407) | $1,959,850 | ($3,055,557) |
| Population Health Improvement | $234,261 | $6,708,622 | $6,942,883 |
| Health Research & Graduate Medical Education | $604,952 | $3,978,992 | $4,583,944 |
| Region-wide Health Information Exchange | ($407,147) | ($1,342,000) | ($1,749,147) |
| **Totals**[1] | | | **Shortfalls Sum ($4,804,704)** |

**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 was the third year of Ballad's initial set of six three-year required plans. These initial plans were set to expire June 30, 2021. However, Ballad requested a one-year extension of the approved plans due to the strain the system was experiencing while operating during the COVID-19 pandemic the negative effects on plan activities from dealing with the COVID-19 epidemic. The request was conditionally granted by the Commissioner on February 2, 2021. The one-year extension required numerous revisions of the existing plans, with the changes applying to only the fourth (extension) year, covering FY 2022.

New draft three-year plans covering Fiscal Years 2023-2025 were due by April 1, 2022. Ballad submitted its draft three-year replacement plans and budgets on March 31, 2022. VDH and TDH reviewed the plans and budgets and provided unified feedback to Ballad. Ballad provided additional information on numerous proposed initiatives, resulting in approval of additional items being included in the final plans. The Commissioner's approval of the six plans and budgets for FYs 2023, 2024, and 2025 was imminent at the end of June 2022.

During FY 2022, the Commissioner issued 11 decisions on Plan amendments submitted by Ballad, which are listed in Table 4. Eight of the requests were approved for inclusion into the existing approved required Plans. Three of the requests were denied.

*Table 4: Commissioner Decisions on Ballad Plan Amendment Requests – Fiscal Year 2022*

| Amendment Request | Plan | Submission Date | Decision Date | Decision |
|---|---|---|---|---|
| Cardiac monitors. Donate $3.4M to local EMS providers to purchase monitors over 2 years | Rural Health Plan | 1/8/2021 | 9/13/2021 | Approval |
| HR/GME - $150,000 grant to help fund a new program at Milligan University. | Health Research & Graduate Medical Education | 3/17/2021 | 9/27/2021 | Denial - requested after grant awarded. |
| Miracle Field 2 (Kingsport) - donate additional $50,000. | Children's Health Plan | 7/6/21 | 9/27/2021 | Approval |
| Relocate Residency in Norton to NCH campus. Operational relocation of existing program in Norton and combine with another existing residency on NCH campus. | Health Research & Graduate Medical Education | 3/5/2021 | 11/3/2021 | Denial - operational decision, existing program. |
| Lee County Community Fund: $500,000 grant required by LCHA/BH agreement to sell property to Ballad. For population health efforts in Lee County, VA. | Population Health | 8/19/2021 | 11/4/2021 | Approval |
| Hire a consultant for $25,000 to opine on Ballad's efforts. | Health Research & Graduate Medical Education | 11/17/2021 | 12/7/2021 | Approval |
| $525,000 total funding for the Streamworks STEM education program. Year 1 - $75,000; years 2 through 4 - $150,000 per year. | Health Research & Graduate Medical Education | 11/18/2021 | 3/2/2022 | Approval |
| ETSU regional center for nursing professional advancement - $10,000,000 grant over 7 years. Year 1 - $1,750,000. Years 2 through 7 - $150,000 per year. | Health Research & Graduate Medical Education | 11/17/2021 | 3/2/2022 | Approval |
| Women's & Children's service upgrades at IPH - $6,127,127 - *Re-submission.* Construction, renovation and equipping of the family childbirth center at Indian Path Community Hospital to create the Regional Women's and Newborn Center; $6,127,127 spread over two years. | Children's Health Plan | 11/11/21 | 3/2/2022 | Denial - Operational replacement of existing services. |
| E&H NEW BSN program - Grant funding to help establish Emory & Henry's new BSN program - $2,397,960 total in various amounts over 5 years. | Health Research & Graduate Medical Education | 11/17/2021 | 3/29/2022 | Approval |
| Gatton College of Pharmacy at ETSU - grant funding for Gatton College of Pharmacy at ETSU - $700,000 annually for 5 years; $3,500,000 total.funding. | Health Research & Graduate Medical Education | 11/17/2021 | 3/29/2022 | Approval |

**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, VDH'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 2022, including the pricing limitations on contracts with payors.

The COPA Monitor's annual report on FY 2022 can be found in the Tennessee Department of Health COPA FY 2022 Annual Report:

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. Ballad provided a copy of the Cooperative Agreement Conditions, as required. No negotiations reached a point that required consideration of mediation or arbitration.

**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.**

The Commissioner gave conditional approval on February 2, 2021 for a 1-year extension of the 2019-2021 three year plans. Ballad updated its Plans and budgets to include fiscal year 2022; these updates were reviewed and approved by the Commissioner. Ballad submitted replacement three-year plans covering Fiscal Years 2023-2025 by the April 1, 2022 deadline, as required and discussed under Condition 4.

For FY 2022, Ballad's first three-year HIE Plan was in effect. As reported under Condition 3 above, Ballad's annual spending commitment for FY2022 was $333,000. Due to a Baseline spending shortfall of $326,215, Ballad's total Plan spending requirement for FY 2022 was $659,215. Ballad was credited with $252,068 in new incremental expenses in support of the plan during the year, resulting in a shortfall of $407,147.

Ballad Health's FY 2022 Annual Report details the progress of the HIE plan on page 40. While Ballad continued to expand EpicCare Link and provide data to OnePartner, progress on this initiative has slowed significantly due to some of the strategies being implemented and requiring less input at this point. Ballad has initiated an engagement survey through Health Link Advisors (HLA) to assess existing provider access to Ballad's patient data. The three

monitors are participating in the process, assisting HLA in development of survey questions and identification of specific providers from whom HLA will seek input. The monitors remotely meet each week with HLA staff to discuss progress on the project. The survey will help the states determine whether the goals and purposes of the Plan are being met.

**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 inpatient hospital beds in the region, a significant proportion of the region's outpatient providers, including primary care, behavioral health services, obstetrics care, and other ambulatory services providers, are 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.

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 and Epic Community Connect. The EpicCare Link and Epic Community Connect options will allow Ballad to share patient data with other 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.

Ballad's adoption of the Epic platform allows Ballad to offer two possible linkages to independent physician groups: EpicCare Link and Epic Community Connect. Ballad did not choose to create a new regional health information exchange network. Ballad's collaboration with independent physician groups has been, therefore, limited to these two options. Ballad believes that these options will be sufficient to meet the requirements of Condition 9. VDH expects Ballad to provide more information in the future on its efforts to ensure independent providers have adequate access to patient data. The HLA engagement should provide meaningful information on the adequacy of Ballad's efforts.

**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.**

Condition 10 was suspended during the first COVID-19 Suspension period, pushing the required dates back by 17 months. On page 43 of Ballad's Annual Report, Ballad claims compliance with both parts of this condition has been achieved. The second new risk-based contract with a Large Payor was attained through Blue Cross Blue Shield of Tennessee Medicare Advantage risk model with the Ballad Health Blue Ridge Physician Group.

**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.**

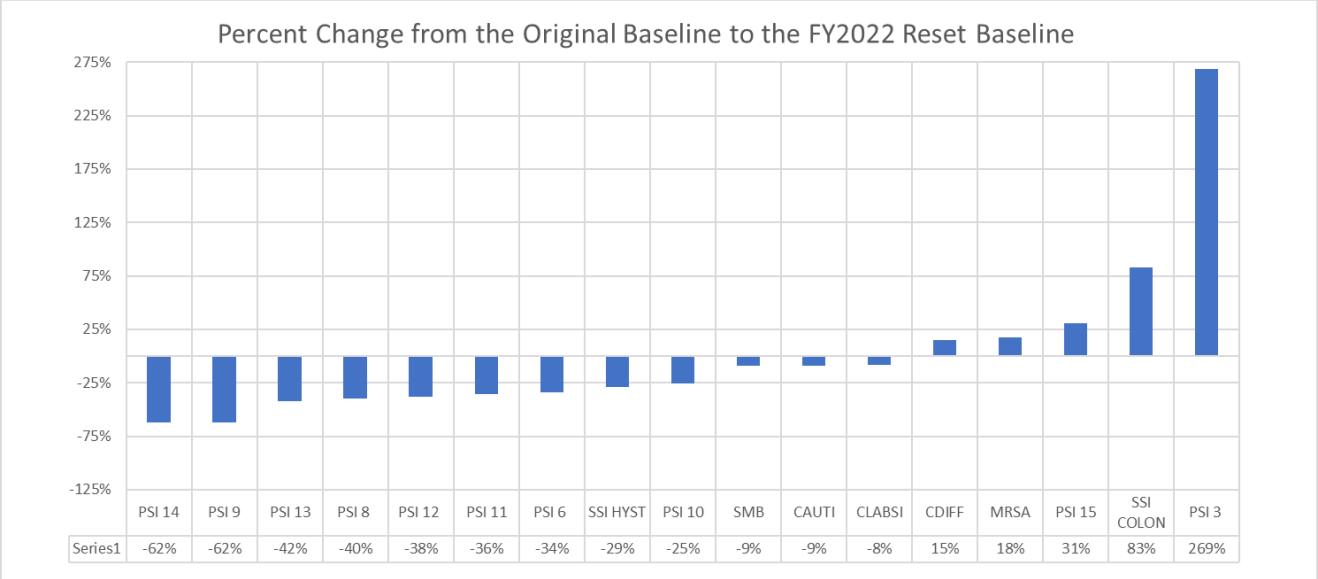
For the period under review, the Department has not been notified by DMAS of any issues of non-compliance or failure to engage as required.

**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.**

Condition 12 was suspended under the second COVID-19 suspension letter until December 31, 2021, but Ballad was required to post the data within 90 days of the end of the suspension. Ballad included the full year of data in their FY 2022 Annual Report and submitted periodic quality data as required during the fiscal year.

In May 2021, the Baseline was reset with the approval of The Department. Most of the rates were decreased, but Clostridioides difficile (CDIFF), Methicillin-resistant Staphylococcus aureus (MRSA), PSI 15: Unrecognized Abdominopelvic Accidental Puncture/Laceration Rate, Surgical Site Infection (SSI) COLON, and PSI 3: Pressure Ulcer Rate increased. The change to each metric baseline is shown below as a percentage.

*Chart 1. Percent Change from the Original Baseline to the FY 2022 Reset Baseline.*




In the FY 2022 Annual Report, Ballad acknowledges that its performance with respect to metrics has been mostly worse than baseline, indicating the cause to be the "continued stress on the system treating COVID patients as well as staffing shortages." Ballad provided independent evidence to support its argument that these issues were widespread and the result of the COVID-19 epidemic. Of the 17 target measures, only 5 were at or above the reset baseline, while 12 (70.59%) were below baseline. This is in stark contrast to FY 2021's

metrics, where 10/17 metrics were at or above baseline. In comparison to FY 2021, performance with respect to 7 metrics declined.

*Chart 2. Metrics Performance in Relation to the Baseline.*

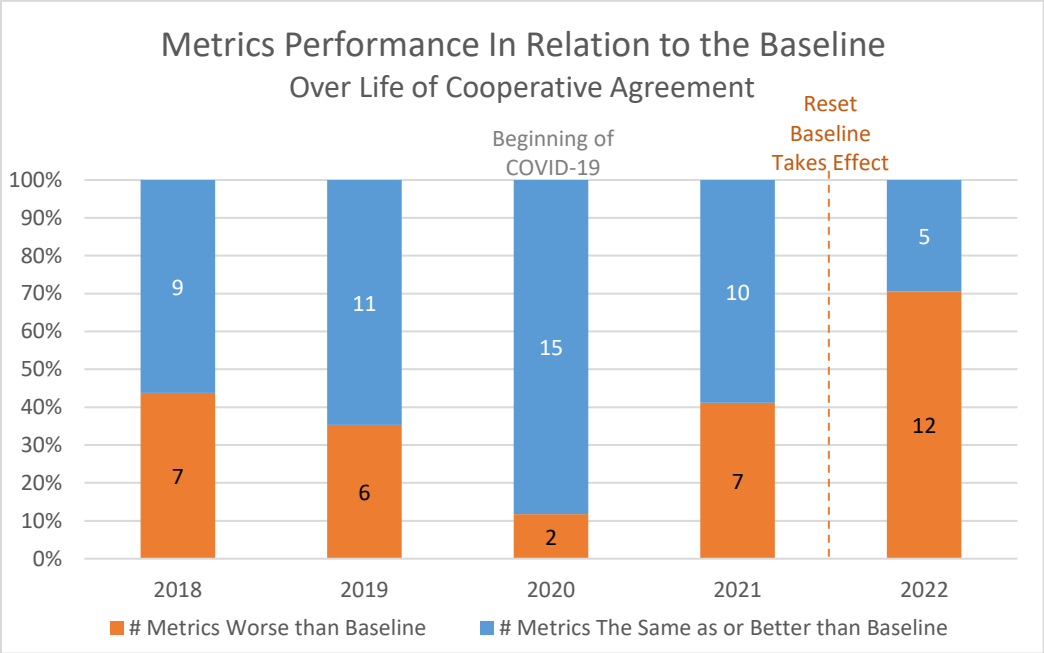
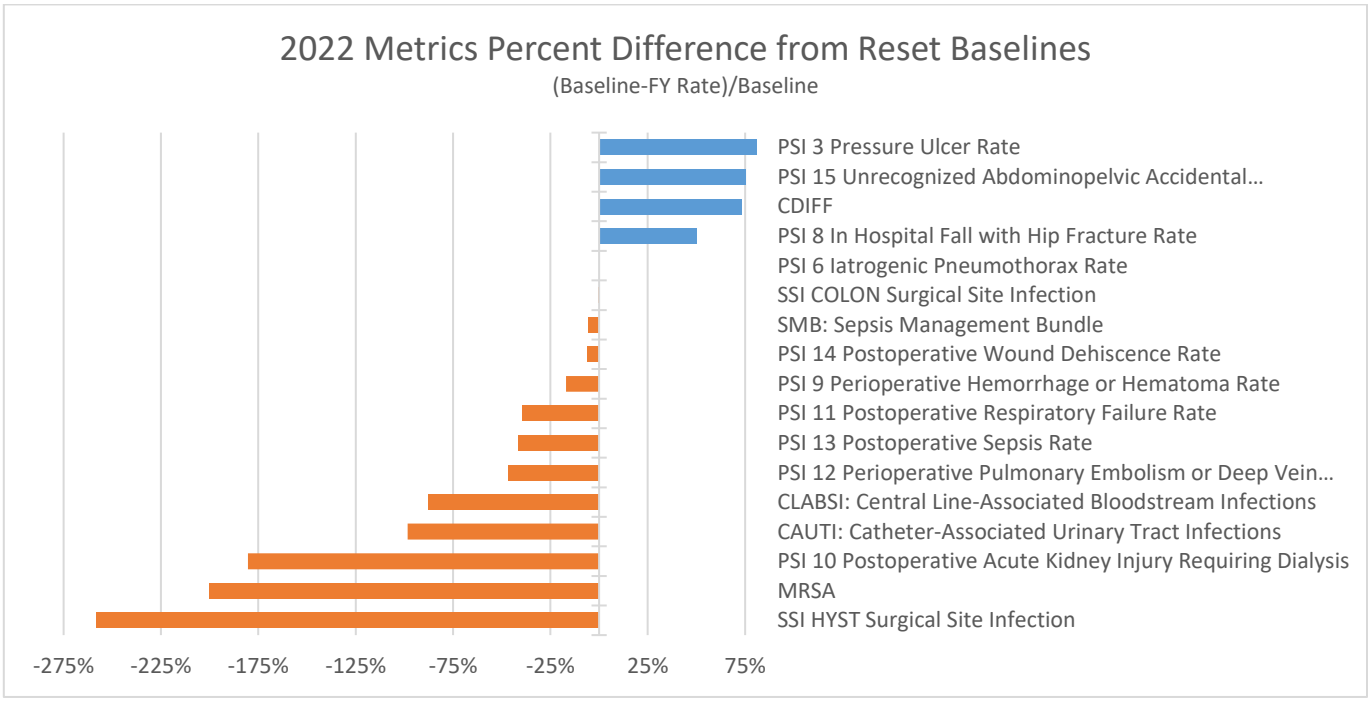



*Chart 3. 2022 Metrics Percent Difference from Reset Baseline.*




*Metrics in Orange are performing worse than Baseline.*

**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 2022 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 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.

*Table 5. Ballad Health Self-Reported Charity and Reduced Price Care - FY 2022*

| 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 | FY17 Baseline Adjusted by FY22 HIA* | FY22 Actual as of 6/30/2022 |
|---|---|---|---|---|---|---|---|
| Charity Care | $ 35,034,403 | $ 36,067,918 | $ 37,204,057 | $38,413,189 | $ 39,431,139 | $ 40,594,357 | $ 21,678,321 |
| Unreimbursed TennCare & Medicaid | 61,605,896 | 63,423,270 | 65,421,103 | 67,547,289 | 69,337,292 | 71,382,742 | 50,999,268 |
| **Total** | **$ 96,640,299** | **$ 99,491,188** | **$ 102,625,160** | **$ 105,960,478** | **$ 108,768,431** | $ 111,977,099 | **$ 72,677,589** |
| | | | | | | **Variance from Baseline** | **$ (39,299,510)** |
| *Hospital Inflation Adjustment (HIA) = . . . | | 2.95% | 3.15% | 3.25% | 2.65% | 2.95% | |

**FY2022 actual results are based on preliminary data and are subject to change with the 990 filing.*
***Table 5 is taken directly from page 37 of Ballad Health's FY 2022 Annual Report.*
*Note: The Hospital Inflation Adjustment (HIA) is a term crafted for use in the active supervision of the Ballad Cooperative Agreement. It is an annual inflation index that is based on the most recently available annual inpatient percentage of increase by Medicare, commonly referred to as the Market Basket, plus 0.25 percent.*

According to the financial reporting found on page 90 of Ballad's Annual Report, Ballad's FY 2022 charity care total of $72,677,589 is equal to 0.675% of Ballad's Total Patient Revenue of $10,771,890,062. The figure also represents 3.14% of Ballad's Total Operating Revenue for the period, which is calculated as "Net Operating Revenue" plus "Other Operating Revenue." 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 who 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.

Ballad acknowledges that the Charity Care provided falls short of the baseline, and attributes this to "material decline in volumes tied to efforts by Ballad and area physicians related to improving value, an increase in Medicaid reimbursement for services from TennCare and Virginia Medicaid, and ongoing expansion of Medicaid eligibility in Virginia that resulted in more patients being covered by Medicaid. The COVID-19 pandemic has further accelerated the volume declines." Ballad is also working to implement additional value-based initiatives which will reduce the need for Charity Care through programs such as the Appalachian Highlands Care Network (AHCN), which "connects uninsured patients and their families with free or low-cost clinics, dental services, financial counseling, and preventative care services."

**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.

During FY 2022, Ballad continued its support of the medical-legal partnership with the Appalachian School of Law and Virginia Tech that provides advice and direction to patients that can affect the patients' ability to take advantage of Ballad's financial assistance policy. On page 3 of the Executive Summary of Ballad's FY 2022 Annual Report, Ballad states that Ballad "expanded its medical-legal partnership with the Appalachian School of Law and Virginia Tech to all hospitals within the health system. The partnership pairs law students with patients to help address legal issues such as insurance, benefit denials, guardianship disputes, housing instability and other social needs that drive poor health and contribute to population health inequities."

**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 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 June 30, 2021, when the State of Emergency declared by the Governor ended.

In August 2021, Ballad reported that the ongoing COVID-19 pandemic was a "Material Adverse Event", and the Commissioner granted an additional suspension period for a smaller set of conditions than the first suspension period, displayed previously in Exhibit 1. This suspension period lasted until December 31, 2021. Ballad did not avail itself of the option to request monthly extensions.

**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 2022.

**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.**

Despite the suspension of this requirement during the initial COVID-19 response, Ballad claims to have met the $70 million minimum required by this condition. During fiscal years 2020 through 2022, Ballad claims to have applied more than $73 million to market adjustments and/or raises for Ballad team members. According to Ballad's report, "this does not include any overtime, premium pay, or incentives." These expenses are ongoing. Ballad plans to continue to annually compare its positions to market data, identify priority jobs, and give adjustments where "operationally feasible". The monitors plan a more thorough review of Ballad's efforts in this area during FY 2023 to determine whether the claimed expenses are properly considered salary equalization actions.

**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 through FY 2023.

**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, nor is the Department aware of any terminations made without cause. Ballad did not report and the Department is not aware of any reductions of 50 or more employees.

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

Condition 22 was suspended through December 31, 2021. Ballad reports that progress continues to be made, and the budget for organizational development and clinical education has increased nearly 20% to $4.9 million. This budget is allocated to various programs including new team member orientation, leadership training, nurse residency and Certified Nursing Assistant to Registered Nurse programs, tuition reimbursement, and deployment of a learning management system.

**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 FY 2022, 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 FY2022 was $8,667,000. Ballad was credited with $9,271,952 in new incremental expenses in support of the plan during the period, resulting in an excess of $604,952.

The Ballad FY 2022 Annual Report details progress made on this plan on page 42 including:

- Initiated regional workforce analysis to identify hiring needs to build research capacity and academic program growth.
- Began the selection process for a clinical trials management system, and worked on policy and procedures for data sharing, monetization, and de-identification.
- Continued partnership with East Tennessee State University and developed partnership with Virginia Commonwealth University.
- Expanded medical-legal partnership across all Ballad hospitals and funded programs including STREAMWORKS, Emory & Henry Nursing, and a Simulation Lab at King University.

**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.**

The Commissioner gave conditional approval on February 2, 2021 for a 1-year extension of the 2019-2021 three year plans. Ballad updated its Plans and budgets to include fiscal year 2022; these updates were reviewed and approved by the Commissioner. Ballad submitted replacement three-year plans covering Fiscal Years 2023-2025 by the April 1, 2022 deadline, as required and discussed under Condition 4.

Ballad increased resident training slots in Dental by two, and in Obstetrics by one compared to fiscal year 2021.

**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.**

The Commissioner gave conditional approval on February 2, 2021 for a 1-year extension of the 2019-2021 three year plans. Ballad updated its Plans and budgets to include fiscal year 2022; these updates were reviewed and approved by the Commissioner. Ballad submitted replacement three-year plans covering Fiscal Years 2023-2025 by the April 1, 2022 deadline, as required and discussed under Condition 4.

Ballad outlines new and ongoing clinical studies for FY 2022 on page 31 of the Annual Report. Additionally, they highlight progress on some of their goals including:

- Support was provided to faculty, resident, and students engaged in research by working to create an improved process for requesting data from EPIC, providing statistical support for researchers, and developing a process for read-only access to charts.
- A student tracker database and a research compliance database were deployed. Work on the STRONG LINK database continued.

- Ballad is working to create a pathway to employment for high school students in their last year in conjunction with regional high schools.

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

Ballad chose Epic information technology system for use throughout the health system, and made access to other providers free of charge through EpicCare Link. Epic was implemented in Ballad-affiliated practices in June 2020 and all Ballad hospitals in October 2020. Ballad also offered access to Ballad records to other area providers through Epic CareLink and provides assistance to providers in establishing access. During FY 2022, Ballad initiated Health Link Advisors' engagement to survey existing providers regarding access to Ballad's patient data. Additionally, efforts have been made to align Epic's capabilities with The Office of the National Coordinator for Health Information Technology (ONC) communications standards and requirements for inclusion in a nationwide heath information exchange network.

**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 FY 2022, Ballad's Virginia hospitals remained operational as health care institutions. In July 2021, Ballad closed the Urgent Care Center (UCC) in Pennington Gap in Lee County, and opened Lee County Community Hospital. This transition ensured that the essential services required to be provided in Condition 27, and as agreed to between Ballad and the Lee County Hospital Authority, are available within Lee County. Lee County Community Hospital remained operational throughout FY 2022, providing the citizens of Lee County and the surrounding area with local availability to emergency, inpatient, and other critical healthcare services.

**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 residents throughout Ballad's Virginia service area rely on these hospitals for tertiary care services. Additionally, these three facilities serve as the primary hospitals utilized by many Virginians. Neither Ballad Health nor either of the legacy health systems, Wellmont Health System and Mountain States Health Alliance, have ever operated a tertiary referral hospital in Virginia.

**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 engaged PYA, P.C., based in Knoxville, Tennessee, to conduct the required triennial confidential provider needs assessment. It was published on June 30, 2022, the last day of FY 2022. PYA conducted its needs analysis on a hospital service area basis, but also reported its results based on Ballad's operational market definitions. The completed needs assessment addressed physician and advanced practitioner needs and included a recruitment plan, satisfying the condition for the period under review. Ballad shared with VDH that the specific recruiting targets contained it its operational recruitment plan are determined and prioritized through traditional ongoing review of local market and systemic needs. The identified provider needs are measured against the needs assessment to ensure compliance with applicable state and federal Codes and regulations.

**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.**

The Commissioner gave conditional approval on February 2, 2021 for a 1-year extension of the 2019-2021 three year plans. Ballad updated its Plans and budgets to include fiscal year 2022; these updates were reviewed and approved by the Commissioner. Ballad submitted replacement three-year plans covering Fiscal Years 2023-2025 by the April 1, 2022 deadline, as required and discussed under Condition 4.

For FY 2022, Ballad's first three-year Rural Health Services Plan was in effect. As reported under condition 3 above, Ballad's annual spending commitment for FY2022 was $5,000,000. Due to a Baseline spending shortfall of $5,109,870, Ballad's total Plan spending requirement for FY 2022 was $10,109,870. Ballad was credited with $20,285,059 in new incremental expenses in support of the plan during the year, resulting in an excess of $10,175,189.

Ballad provided an update on its rural health plan initiatives on pages 38 and 39 of its Amended Annual Report. Several hires were made during FY22.

- Ballad hired eight new and/or replacement primary care providers, including three in Virginia:

  - Gastroenterologist Advanced Practice Provider (APP) in Abingdon
  - Pulmonary APP in Wise County.
  - Clinical pharmacist
- Ballad hired a behavioral health care navigator.
- Implemented virtual services for urgent care and behavioral health, and increased usage of Visuwell, a virtual health platform, among Ballad providers.
- Held 21 Health Fairs across the Ballad service area, with a focus on diabetic eye exams, colorectal screening education, and annual wellness visits.

**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.**

The Commissioner gave conditional approval on February 2, 2021 for a 1-year extension of the 2019-2021 three year plans. Ballad updated its Plans and budgets to include fiscal year 2022; these updates were reviewed and approved by the Commissioner. Ballad submitted replacement three-year plans covering Fiscal Years 2023-2025 by the April 1, 2022 deadline, as required and discussed under Condition 4.

For FY 2022, Ballad's first three-year Behavioral Health Services Plan was in effect. As reported under condition 3 above, Ballad's total Plan spending requirement for FY2022 was $9,333,000. Ballad was credited with $4,317,593 in new incremental expenses in support of the plan during the year, resulting in a shortfall of $5,015,407.

Over the course of FY2022, Ballad Health made the following progress on the Behavioral Health Services plan (on pages 37 and 38 of the Annual Report):

- Hired director of Case Management and Operational Excellence/Project manager, while two other positions have been posted for hire.
- Telehealth stakeholder team was established and identified needed resources, received quotes from outside vendors. Tele-vendor option was deemed inviable due to unsustainable cost. Due to this, four positions were listed for Psychiatric Mental Health Nurse Practitioners, with one being hired at the Family Medicine Clinic in Rural Retreat, Virginia.
- Opened three additional Outpatient and Employee Assistance Program Clinics, leading to 400 new visits, in Greenville, Tennessee, Rogersville, Tennessee, and Big Stone Gap, Virginia.
- A second therapist was added to the school telehealth program and expanded into additional schools reaching six school systems in Tennessee and one in Virginia. However, the vendor cancelled the contract in April 2022 due to low utilization of services.
- In Greeneville, Tennessee, the Strong Futures residential treatment center for pregnant women experiencing homelessness and/or substance abuse served 239 families during the year.

**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.**

The Commissioner gave conditional approval on February 2, 2021 for a 1-year extension of the 2019-2021 three year plans. Ballad updated its Plans and budgets to include fiscal year 2022; these updates were reviewed and approved by the Commissioner. Ballad submitted replacement three-year plans covering Fiscal Years 2023-2025 by the April 1, 2022 deadline, as required and discussed under Condition 4.

For FY 2022, Ballad's first three-year Children's Health Services Plan was in effect. As reported under condition 3 above, Ballad's total Plan spending requirement for FY 2022 was $4,667,000. Ballad was credited with $3,761,303 in new incremental expenses in support of the plan during the year, resulting in a shortfall of $905,697.

Over the course of FY 2022, Ballad Health made the following progress on the Children's Health Services plan (on pages 39 and 40 of the Annual Report):

- Hired several key roles to develop children's health services infrastructure, including a clinical coordinator, pediatric operating room manager, health promotion coordinator, and two complex care coordinators.
- Continued to expand school-based and subspecialty care telehealth.
- A pediatric endocrinologist was hired, while recruitment efforts continue for pediatric pulmonology, nephrology support and neurology.

**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.**

The Commissioner gave conditional approval on February 2, 2021 for a 1-year extension of the 2019-2021 three year plans. Ballad updated its Plans and budgets to include fiscal year 2022; these updates were reviewed and approved by the Commissioner. Ballad submitted replacement three-year plans covering Fiscal Years 2023-2025 by the April 1, 2022 deadline, as required and discussed under Condition 4.

As the lead organization for the STRONG (Striving Toward Resilience and Opportunity for the Next Generation) Accountable Care Community (ACC), Ballad's efforts have resulted in meaningful partnerships with hundreds of community-based providers throughout the region. These local organizations coordinate various offerings through the ACC to ensure that patients receive timely access to appropriate services.

For FY 2022, Ballad's first three-year Population Health Plan was in effect. As reported under condition 3 above, Ballad's total Plan spending requirement for FY2022 was $6,667,000. Ballad was credited with $6,901,261 in new incremental expenses in support of the plan during the year, resulting in an excess of $234,261.

Over the course of FY2022, Ballad Health made the following progress on the Population Health Improvement plan (on pages 41 and 42 of the Annual Report):

- Produced population health retrospective study report and findings and created a longitudinal study and database plan.
- Initiated Strong Pregnancies and Starts screening in all Ballad Obstetrics practices and hospitals and promoted prenatal navigation services.
- Increased enrollment in the Appalachian Highlands Care Network (AHCN).

**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 requires that a minimum of three of the eleven members of Ballad's Board of Directors are Virginia residents, and that Virginia is represented on each of the Finance, Audit and Compliance, Quality, Community Benefit/Population Health, and Workforce committees. It also requires that no less than 30% of the members of the Community Benefit/Population Health committee, which is responsible for the oversight of the compliance of the cooperative agreement, shall reside in Virginia.**

Ballad confirmed that the requirements in Condition 38 are being met. OLC staff independently verified the Virginia residency of each Virginia Board or committee member and confirmed that the requirements were being met.

**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 is also the Board Chairman. Ballad agreed to provide two signatures on documents subject to this Condition – that of the CEO/Board Chairman and the Chief Financial Officer. Ballad 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 during FY 2022.

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

Ballad did not close a Virginia facility during the review period.

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

No evidence or claims have been received by the Department 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 staff providing care only in a hospital-based setting.

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

Ballad continued its participation in the Virginia DMAS 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 active throughout the review period. Ballad's FY 2022 Annual Report contains an extensive collection of efforts of the Council and its eight (8) sub-committees, beginning on page 11.

**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 Virginia Medicaid programs required by this Condition.

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

According to Ballad's FY 2022 Annual Report (page 44), "Ballad executives frequently engage with various DMAS programs consistent with those outlined in Condition 47. The frequency of initial teleconferences was reduced to allow for broader executive engagement with subject matter experts in DAMS and Ballad to ensure strong alignment with DMAS programs."

**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 does not generally benefit Tennessee residents. Similarly, the Behavioral Health Women's Addiction Treatment Center in Greeneville, Tennessee is not readily available to residents of Virginia. Initially, it was prohibited from taking non-Tennessee residents due to the terms of grant funding, which has since expired. During FY 2022, each of these two facilities could have served residents of either state, but generally do not. 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 of Virginia declared a state of emergency due to the COVID-19 pandemic. 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 outlined in the suspension Letter dated April 23, 2020 until the emergency declaration ended, as permitted by Condition 49 of the Order.

The suspension of requirements issued on April 23, 2020 expired June 30, 2021 when the state of emergency declared by the Governor ended. A second suspension letter was issued August 27, 2021, and covered a more limited number of Conditions and requirements than the first. This letter lasted from August 1, 2021 through December 31, 2021. Ballad was provided the opportunity to extend the period which the second letter was in effect on a month-to-month basis but did not avail itself of the opportunity to do so.

## Review of Cooperative Agreement Complaints

The Department receives Cooperative Agreement-related complaints by phone, email, or through the Department's online feedback form. Complaints related to the clinical operation of certified or licensed facilities in Virginia continue to be received by the VDH Office of Licensure and Certification Complaint Unit who refers the complaint to the appropriate work unit, including Cooperative Agreement staff when indicated, for investigation. 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 did not receive any complaints during the review period. VDH was provided a courtesy copy of a complaint emailed to the Tennessee COPA monitor expressing concerns including a lack of availability of surgical time at Johnson City Medical Center, shortages of surgical specialty physician choices (specifically cardiology), operating room staffing shortages, and surgical patients requiring referral elsewhere for care. Following the COPA monitor's review and investigation, the concerns are not Cooperative Agreement issues; rather, they are operational in nature. However, the monitors and the Department were concerned about a potential delay in treatment for patients and began discussions with Ballad about what Ballad is doing to improve the situation. Ballad will continue to report on the results of its efforts during FY 2023.

## 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 the previous closure of Lee County's sole hospital that Ballad subsequently re-opened, several other 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 Virginia portion of their market, Ballad has continued to consider consolidation of certain duplicative services. These should be reflected in future versions of the required three-year plans.

There was in increase in quality metrics performing worse than baseline. Part of this can be attributed to the change in baseline numbers, as most of the measures' baseline decreased. The Department will continue to closely monitor these quality measures as the initial impact of the COVID-19 pandemic subsides, with expectations that metrics consistently improve as staffing and supply restrictions ease. Additionally, Ballad attributes some metric performance as due to COVID-19. In FY 2022, 12 of 17 (70.59%) metrics were performing worse than the reset baseline, and 7 declined between FY 2021 and 2022.

Overall access to care has not suffered, and charges remain within what is allowed by Condition 5. Ballad continues to operate the reopened Lee County Community Hospital, offering area residents access to emergency, inpatient, and outpatient care that would likely not have returned without the merger of Wellmont and Mountain States and the Cooperative Agreement.

Condition 19 requires Ballad to create and implement a plan to spend at least $70 million over 10 years on salary and wage increases. Ballad claims to have met the $70 million minimum required by this condition, with most of the increased expenses continuing annually. The monitors will thoroughly review Ballad's efforts in this area during FY 2023 to determine whether the claimed expenses are properly considered salary equalization actions.

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. The original three-year Plans were extended for one year due to the effects of the COVID pandemic, the declared emergency for which ended June 30, 2022. Ballad provided updated Plans and one-year budgets (minimum) for each of the six plans during the last quarter of FY 2022.

Ballad remains the lead backbone organization of the area wide STRONG Accountable Care Community (ACC). The ACC boasts more than 250 member organizations and has chosen to focus on STRONG Children and Families, with the overarching goal to improve population health across the region. It's stated mission is summarized as, "Through collective impact, STRONG ACC partners are building a region where every child – regardless of zip code, race/ethnicity, or circumstance – has the opportunity and support to become, thriving, and economically independent young adults." Ballad further leverages the STRONG moniker by utilizing it in the names of related programs that support similar goals.

A continuing public refrain is that Ballad does not do enough to keep needed medical specialties available locally to citizens. Recruitment and retention rates of rural primary and specialty physicians, as well as nurses and ancillary providers, has failed to meet the expectations of many in

the region. Ballad continues to recruit providers according to its recruitment plan. VDH periodically reviews Ballad's inventory of providers in each locale and monitors Ballad's recruitment and retention efforts to ensure that identified needs for primary and specialty care providers are being prioritized. VDH will continue to closely monitor future changes within the provider needs assessment and recruitment efforts to ensure Ballad's compliance with established requirements.

Ballad did not meet spending commitments on two of the six required categories during FY 2022, Behavioral Health and HIE. The total of the shortfalls was $4,804,704, which is the new balance required in the previously created Board-designated fund. The monitors quarterly review Ballad's Baseline, and new and incremental Plan spending, to stay abreast of spending trends that affect Ballad's annual compliance with spending requirements. Annually, the monitors retroactively review Ballad spending for appropriateness prior to applying expenditures against the Baseline and Plan spending requirements found in Exhibit B of the Virginia Order.

The Ballad Health Niswonger Children's Network Strong Pregnancies enrolled "nearly 1,500 women in care navigation in FY 22", and 380 "graduates" of the program were transitioned to enrollment in Strong Starts, which follows families until 5 years post-partum. The Strong Futures program served 239 unduplicated families, and the living center was fully occupied. Ballad expanded screening to include all seven labor and delivery units in Ballad Health system, and a total of six OB/GYN practices.

Three new outpatient behavioral health clinics were opened in FY 2022, with two in Tennessee and one in Big Stone Gap, Virginia. Construction on the Woodridge Hospital, in Tennessee, 24-hour behavioral health crisis walk-in center began.

Ballad continued its efforts to ensure access to care through its policies and practice, including its generous policy for reduced or free care and presumptive eligibility program. Overall, the burden of proof for low-income patients has been significantly lessened through Ballad's efforts. Ballad expanded support of programs to provide healthcare to low-income and uninsured individuals. The Appalachian Highlands Care Network (AHCN) doubled enrollment from FY 2021 to FY 2022, with more than 3,400 individuals enrolled. Ballad describes the AHCN in their Annual Report executive summary as a program that "provides free ongoing prevention, primary care, diagnostics, emergency and inpatient services to enrolled members who are identified by care navigators embedded in community clinics, emergency departments and other care sites throughout the region." Ballad also connects patients with legal resources through its expanded medical-legal partnership with the Appalachian School of Law and Virginia Tech. The dental residency program at the Appalachian Highlands Community Dental Clinic (sponsored by Ballad), which is a clinic for low-income and uninsured individuals, served 3,468 patients. The "Safe at Home" program served 5,654 patients and "saved millions of dollars in potential hospitalization costs…" according to Ballad Health's FY 2022 Annual Report. Ballad Health's Hospital at Home waiver was approved by the Centers for Medicare and Medicaid Services (CMS), "allow[ing] Ballad to provide hospital-level care at home for Medicare patients…"

## 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, or has developed a plan to correct any deficiency, during FY 2022. Additionally, the fourteen reasons given for the original approval of the Cooperative Agreement remain valid. The Department of Health remains vigilant in its active

supervision efforts, tracking and analyzing Ballad's activities and spending in numerous areas critical to the residents of the service area and Ballad's long-term success as the region's sole provider of acute care and emergency services. The Department actively and openly communicates with Ballad to direct Ballad's efforts towards improving the health of the population they serve in Virginia.

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.