



**STATE OF TENNESSEE**  
**DEPARTMENT OF HEALTH**  
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**MORGAN McDONALD, MD, FACP, FAAP**  
COMMISSIONER

December 20, 2022

Mr. Alan Levine  
Chairman, President and Chief Executive Officer  
Ballad Health  
303 Med Tech Parkway, Suite 300  
Johnson City, TN 37604

RE: Request for Temporary Suspension of the Addendum 1 Rate Cap

Mr. Levine,

This is in response to your letter dated September 19, 2022 in which you jointly ask the Tennessee Department of Health ("TDH") and the Virginia State Health Commissioner to grant a temporary suspension of the pricing limitations ("Addendum 1 Rate Cap") established under Article V and its Second Amended and Restated Addendum 1 of the Third Amended and Restated Terms of Certification, dated July 1, 2022 ("TOC"). Because the Addendum 1 Rate Cap was an economic principle foundational to the issuance of the Certificate of Public Advantage ("COPA") I have consulted with the Tennessee Attorney General who is a co-signatory on this response.

Thank you for the information regarding the business and economic pressures facing the health care industry at this time and the specific information about the current financial challenges being faced by Ballad Health ("Ballad"). We recognize the potential gravity of these pressures and challenges. However, we must also recognize the vulnerability of the patients, employers, payors and other constituencies of Northeast Tennessee to increased health care costs.

We note that the market basket increase announced by the Center for Medicare & Medicaid ("CMS") was one of the highest increases in recent years. Based upon the increased cost in health care expenses, the market basket increase in future years may also be above historical levels. Further, we note that your letter speaks to the base price increase calculated under the Addendum 1 Rate Cap but fails to reference the effect of cumulative adjustments that accrue if Ballad has not met the entire Addendum 1 Rate Cap in prior negotiations with specific payors. We are informed by the Tennessee COPA Monitor that most or all relevant payors have

cumulative adjustments available for FY23 and beyond. Finally, we note that Ballad, like many health care companies, has been the recipient of significant one-time funds from federal, state and other sources as a result of the COVID-19 pandemic response, and the full financial benefit of these sources have not yet been realized.

Nevertheless, based upon prevailing economic pressures, we believe that Ballad does need the flexibility to discuss appropriate market-based increases with its payors to resource properly its delivery system based upon the present extraordinary labor, supply and other cost growth. We encourage Ballad to negotiate vigorously for appropriate market-based increases. No provision specifically prohibits Ballad from seeking increases, even from Standard Payors (as such term is defined in the TOC), up to or even exceeding the Addendum 1 Rate Cap.

The existing review process for Stand Payor Contracts as set forth in Section 3.1(f) of Addendum 1 of the TOC does prevent the COPA Monitor from approving increases above the Addendum 1 Rate Cap. However, Section 3.1(b)(ii) of Addendum 1 grants the COPA Monitor certain discretion in considering together Standard Payor Contracts with a single payor negotiated at the same time for compliance with Addendum 1. The COPA Monitor is also granted certain discretion under Parts II, IV and V for the approval of contracts with other categories of payors. We have encouraged the COPA Monitor to consider the financial pressures and the market conditions under which Ballad is operating as he reviews aggregating contracts. We have further encouraged the COPA Monitor to recommend waiver of the Addendum 1 Rate Cap to us for any contracts which he determines are appropriate market-based increases even if they exceed the Addendum 1 Rate Cap.

Accordingly, we have determined that the likely benefits of granting this waiver request universally do not outweigh the potential adverse impacts. Therefore, at this time, the request to suspend temporarily the Addendum 1 Rate Cap is not granted but rather the State will evaluate contract approval on a case by case basis.

If the economic pressures or financial challenges continue into future years, Ballad may wish to again seek suspension of the Addendum 1 Rate Cap, providing specific information about its actual financial performance as well as the exhaustion of its cumulative adjustments in order to demonstrate a need for the temporary suspension.

Thank you for your continuing efforts to serve the needs of your patients. While TDH and the Attorney General's Office take our supervision role under the COPA very seriously, we also see ourselves as partners with Ballad in working through the various issues that will invariably arise in this unprecedented process. We are confident that the collaborative approach proposed in this letter will support Ballad in its efforts to succeed in the face of industry challenges and assure the economic bargain negotiated for the citizens of Northeast Tennessee. Ballad's success is imperative to the residents of Northeast Tennessee and Southwest Virginia, and we want to do our part to help make that success possible. Please let my staff know if you have any additional

questions or need further clarification.

Sincerely,



Morgan McDonald, MD, FACP, FAAP  
Commissioner



Jonathan Skrmetti  
Attorney General and Reporter

cc: The Honorable Colin M. Greene, MD, MPH  
State Health Commissioner  
Virginia Department of Health

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