



**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

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BILL LEE
GOVERNOR

RALPH ALVARADO, MD, FACP
COMMISSIONER

July 22, 2024

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

RE: Ballad Health's ("Ballad") Request for Physician 35% Waiver (General Surgery and Bariatric & Colorectal Surgery in Sullivan County)

Mr. Levine,

This is in response to your most recent letter dated March 12, 2024, to the Tennessee Department of Health ("TDH") requesting a waiver under Section 5.05(e) of the Fourth Amended and Restated Terms of Certification, dated July 1, 2023 ("TOC") to permit certain trauma surgeons to perform general surgery duties and to employ a bariatric specialty surgeon and a colorectal specialty surgeon in Sullivan County, Tennessee. This request has shifted over time based upon individual surgeon requests, market condition changes and the needs of the community for surgical services. The original request to TDH came as early as the summer of 2023, but prior requests were either withdrawn or modified by Ballad based upon questions from TDH and the Tennessee Certificate of Public Advantage ("COPA") Monitor.

TDH recognizes patients' needs for surgeons within the community. General surgery, as listed on the most recent System-Wide Provider Needs Assessment (2022) available to us, is a specialty with a deficit of greater than 5 full-time equivalent ("FTE") surgeons in the service area. That same assessment indicates that no bariatric nor colorectal specialty surgeons exist in the community. TDH further understands that without investment by Ballad, many needed specialties in the rural and non-urban region might not be available to serve those patient needs.

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Section 5.05(c) of the TOC imposes a thirty-five percent (35%) limit on employed physicians practicing in any specialty at the COPA hospitals in Sullivan County (the "35% limit"). TDH has exempted the 35% limit for specific specialties in the TOC and waived the 35% limit by letters addressing certain specialties upon a finding that the number of employed physicians in any specialty has not reached a level that would materially or adversely affect existing competition or for other reasons supporting patient access to care.

As to general surgery, I note that by letter January 11, 2024, I permitted Ballad to employ surgeons from Bristol Surgery Associates, increasing the percentage of employed general surgeons in Sullivan County market above the 35% limit of the TOC, yet the recommendation of the COPA Monitor indicates that a shortage of general surgery services persists in the community. Ballad is requesting that their employed trauma surgeons be permitted to satisfy part of this shortage, and I am informed that the Ballad-employed trauma surgeons have capacity to provide these needed general surgery services to the community.

As to the specialties of bariatric and colorectal surgery, I understand that employment of these specialties will initiate or expand services that either do not currently exist or are needed in the Sullivan County market, and I further understand that no community physician or group has indicated willingness to recruit and employ these specialty surgeons.

Thus, when reviewing this waiver request, TDH weighed the serious patient access and outcome implications associated with the shortage of general surgery services and the total lack of specialty surgeons in the community against the potential risks to competition of Ballad recruiting and hiring these surgeons and granting this waiver request. TDH has relied upon the representations in your letter regarding the existing general surgeons and needs of the community. I have considered the recommendation of the COPA Monitor. **Therefore, I consent that Ballad-employed trauma surgeons may provide general surgery services in COPA Hospitals in Sullivan County and that Ballad may recruit and employ specialty bariatric and colorectal surgeons practicing in Sullivan County, Tennessee.** Further, these bariatric and colorectal surgeons may also provide general surgery services in COPA Hospitals in Sullivan County. However, as a condition of this waiver, I require that no contract employing any surgeons under this waiver contain any covenant not to compete or similar restriction in favor of Ballad.

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Thank you for your continuing efforts to serve the needs of your patients.

Please let my staff know if you have any additional questions or need further clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Alvarado", with a long horizontal flourish extending to the right.

Ralph Alvarado, MD, FACP
Commissioner

cc: Julie Bennett, Chief Legal Officer
Ballad Health

Marvin Eichorn, EVP, Chief Administrative Officer
Ballad Health

Karen Seiden, COPA Compliance Officer
Ballad Health

Karen Shelton, MD, Commissioner
Virginia Department of Health

Joe Hilbert, Deputy Commissioner for Governmental and Regulatory Affairs
Virginia Department of Health

Erik Bodin, Office of Licensure and Certification
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Kevin Meyer
COPA Analyst, Virginia Department of Health

Allyson Tysinger
Virginia Senior Assistant Attorney General

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Joe R. Landsman
COPA Monitor

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Tennessee Department of Health

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