



**STATE OF TENNESSEE**  
**DEPARTMENT OF HEALTH**  
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**BILL LEE**  
GOVERNOR

**MORGAN McDONALD, MD, FACP, FAAP**  
COMMISSIONER

December 19, 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 a One-Year Extension on the Replacement Capital Plan Submission Requirement

Mr. Levine,

This is in response to your letter dated October 14, 2022 in which you ask the Tennessee Department of Health (“TDH”) to grant a one-year extension on the replacement Capital Plan submission requirement of Section 3.07(b)(ii) of the Third Amended and Restated Terms of Certification, dated July 1, 2022 (“TOC”). Because the replacement Capital Plan must also be submitted to the COPA Monitor, who is a contractor of the Tennessee Attorney General’s Office, I have consulted with the Tennessee Attorney General who is a co-signatory on this response.

Your letter recounts the impact of inflation, labor shortages, major increases in supply cost and unstable volumes that have contributed to make financial forecasting and sustainability planning difficult and further states that the Ballad Health (“Ballad”) Board of Directors and management team determined that it would be nearly impossible to prepare a three-year capital budget without a significant degree of speculation, and which would require extensive modification as economic conditions evolve.

We note that under the provisions of Section 3.07(b)(ii) Ballad is required to submit a replacement Capital Plan no later than ninety (90) days prior to the expiration of an existing plan. The initial Capital Plan was required to be submitted within six (6) months of the Issue Date of the TOC, that is, on or before July 31, 2018 and expired at the end of FY21. However under the terms of the March 31, 2020 letter Suspension of TOC Provision in Response to Notice of Force Majeure Event the general requirements of Section 3.07 were suspended. The Section 3.07 suspension expired June 30, 2022 as delineated in the December 3, 2021 letter Reasonable Recovery Period Following Temporary Suspension of TOC Provision During Public Health

Emergency. Thus the replacement Capital Plan should have been submitted on June 30, 2022, or as early as possible thereafter. As of the date of this letter, TDH has not received a replacement Capital Plan from Ballad. This failure to submit a replacement Capital Plan could be found to constitute “Noncompliance” as that term is defined in the TOC and that Noncompliance could be pursued under the provisions of Section 6.05 of the TOC.

However, based upon the recommendation of the COPA Monitor and in recognition of the unusual economic conditions caused by the COVID-19 pandemic and other factors, we will temporarily waive this Noncompliance provided that Ballad complies with the conditions stated below in granting the extension request and thereafter follows the provisions of Section 3.07 of the TOC.

Accordingly, considering the unusual economic pressures and uncertainties currently faced by the health care industry and the limited duration of the extension request, we have determined that the likely benefits of granting in part this extension request outweigh the potential adverse impacts. **Therefore, we accept the one-year capital budget furnished to the COPA Monitor as sufficient under the requirements of Section 3.07(b)(ii) as a full replacement Capital Plan for FY23 and grant a one-year extension on the replacement Capital Plan submission requirement.** We look forward to reviewing the full three-year replacement Capital Plan on or before April 1, 2023 pursuant to the timing set forth in Section 3.07(b)(ii).

Thank you for your continuing efforts to serve the needs of your patients. While TDH takes 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. 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 F. 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

Andy Wampler, General Counsel  
Ballad Health

Marvin Eichorn, EVP, Chief Administrative Officer  
Ballad Health

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