Virginia Cooperative Agreement Monitor's Report
to the
Cooperative Agreement Task Force
of
Southwest Virginia Health Authority

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Ballad’s “Annual” Report

- For the 8-month pre-Covid period ending Feb. 29, 2020
- Since then, many parts of the Virginia Cooperative Agreement as well as Tennessee Terms of Certification have been suspended
- My objectives this evening:
    1. Focus on a few highlights of Ballad’s report;
    2. Discuss with you my recommendations for changing the Cooperative Agreement for the purpose of your consideration for recommending those changes to the entire Authority for the Authority to recommend to the Commissioner

The “Big Picture”

- The objectives of the Cooperative Agreement and the Tennessee COPA are to reap the savings of consolidation while avoiding the potential abuses of Ballad having too much market power
- In assessing how the Cooperative Agreement has worked out to date, there are four areas to focus on:
  - Access
  - Price—cost to payors, employers, and patients
  - Quality
  - The use of savings realized from the merger to strengthen the health care system and to benefit the community

Volume Declines

- In 2016, the region was behind national trends in reducing hospital inpatient admissions and the volume of other hospital services
- Ballad had predicted a 4% annual decline in inpatient admissions. Instead, *pre-Covid*, Ballad reports that its inpatient admissions declined 14.2%
- Covid caused some volume to go up, largely in unprofitable areas such as medical admissions, and volume to drop precipitously for other services such as surgeries which cross-subsidize money-losing services. Covid also caused huge cost increases for temporary staffing, personal protective equipment, and other measures to enhance safety

Dollar Impact of Volume Declines

- Since the merger, the total number of annual inpatient admissions to Ballad Health hospitals declined by 14.2% resulting in an estimated savings to payors, patients, employers, and government of approximately $149 million in fiscal year 2020. In addition, the total number of emergency room visits to Ballad Health hospitals declined by 21.7 percent, resulting in an additional estimated savings of approximately $52 million. But savings to the community are foregone revenue for Ballad.
    - Some lost revenue has been made up with Federal CARES Act funding, and some more will come from FEMA. Nevertheless, FY 2020 was shaping up as a challenging year *before* Covid hit
    - Ballad did a very good job managing expenses
    - From a care perspective, there is an overhang of medical needs not met in 2020 because patients stayed away from healthcare providers
- NO adverse effect on access

Savings from Merger

- In FY 2019, Ballad reported annual savings from the merger of $32mm
  - Presumably, these savings carry forward to all subsequent years, e.g., reduced payroll from consolidating certain overhead functions is an “annuity” that will be realized in subsequent years.
- For the 8 months ending Feb. 29, 2020, Ballad reported additional savings of $28mm resulting from the merger (which would annualize to nearly $42 mm)
- These savings contribute to Ballad’s financial stability, which would have been precarious, if the two legacy organizations had carried on independently, and also enable Ballad to meet its spending commitments under the CA and COPA

Access

- Measures of number of population within 10 miles of an emergency room and urgent care center have improved slightly from last year
- No County has lost a hospital
- Cooperative Agreement requires Ballad to maintain services at all sites in Virginia where it has a hospital (with more flexibility in Wise County which originally had 3 hospitals)
- Ballad opened an urgent care center in Lee County in Oct. 2019, and Lee County Hospital is scheduled to reopen July 1

Price/Cost to Payors, Employers and Patients

- Ballad is in compliance with Addendum 1 which limits prices it can negotiate with payors; indeed, with most contracts, its negotiated rates are well below the maximum permitted
- The payors have considerable market power themselves
- Payors are also forcing Ballad to accept reduced rates to retain certain business such as outpatient diagnostic testing

Quality

- Mixed results
- Improvements over Ballad's "baseline"
- But some slippage from prior year
- And comparison to peers (based only on peer's Medicare fee-for-service data) is not as favorable as comparison to its own baseline
- Covid hurt
  - Many nurses were out sick, all personnel were overtaxed, and contract personnel are not familiar with Ballad protocols
- Ballad's Clinical Council is intensively focused on quality in the post-Covid era
- We will consider having Ballad report back to the Task Force on quality in the Fall

Spending

- Ballad had a shortfall in meeting the spending requirements it had established in the plans submitted to the States for FY 2019, as discussed in the last meeting
  - Reasonable explanations
- Ballad fell short again in spending for the prorated targets for FY 2020
- Spending requirements were suspended pending Covid emergency, and the States have not yet determined the schedule for transitioning out of the Covid suspension
  - Notwithstanding the suspension, Ballad has continued to spend to further all of the approved plans
- Existing plans will be extended one year, and then new plans will be submitted

Individual Plans for Spending

- There are separate plans for population health, rural health, children's health, research and graduate medical education, health information exchange, and behavioral health
- Ballad's report includes a lot of detail on progress made under each plan. Tonight, Todd Norris from Ballad will talk about population health.
- In future meetings, it will probably be useful to have Ballad explain the details of its plans

Break

Ballad Health

Population Health

Cooperative Agreement Comment

Comments or Questions?

Possible Changes to Cooperative Agreement

- Make consistent with more detailed Tennessee Terms of Certification
- Improve where problems have manifested themselves
- My recommendations are by topic and goal—specific language would need to be addressed by the Department

Charity

- The target charity amount in the Cooperative Agreement (and the Tennessee TOC) is too high:
  - Mistake in base year computation
  - Expansion of Virginia Medicaid
  - Improvement in Medicaid rates in Virginia and Tennessee
  - Decline in charity volume consistent with decline in overall volume
- Ballad’s charity care policy is very generous, and Ballad appears to be following its own policy
- Virginia should adopt the same proposal Tennessee has made--Set a new charity target amount based on Ballad’s 2020 990 tax form. If Ballad fails to meet the new target in subsequent years, require it to conduct an audit in each such instance to verify that it is in substantial compliance with its own charity care policies.
- Virginia should also adopt the existing Tennessee standard which increases the charity target each year by a factor reflecting health care cost increases.

Spending – Flexibility

- Virginia should adopt the Tennessee standard that permits Ballad to underspend for each plan by a small percentage in any single year if it is made up over 3 years:
  - [I]f the New Health System spends less that the annual spending commitment for an applicable category or subcategory in any Fiscal Year by no more than fifteen percent (15%), such shortfall shall not constitute a Noncompliance if the New Health System's spending on such category or subcategory, on an aggregate basis for the three Fiscal Years of the applicable three-year plan, equals or exceeds the amount required to be spent during such three Fiscal Years according to such plan.

Spending—Timing

- Virginia and Tennessee have slightly different timing for their spending requirements but the total over the term of the CA/COPA is the same for both states.
- Coming out of the Covid suspension, the states should align the timing of spending requirements

Spending—Sanctions for Under-Spending

- To the extent permissible under Virginia statute, Virginia should adopt the Tennessee provisions relating to possible sanctions for not meeting spending commitments:
  - With respect to any Noncompliance that is not Cured or is not Curable, the Department shall have the right to invoke one or more Corrective Actions, which may include, without limitation, the following: (1) prohibiting payment of bonuses or other incentive compensation above base salary to any executive officer (i.e., any Vice President or above) of any COPA Party with respect to the Fiscal Year in which the Noncompliance occurred (or, as applicable, requiring repayment of such compensation if already received with respect to such Fiscal Year); (2) requiring the COPA Parties to make a remedial contribution in the amount determined by the Department to the Population Health Initiatives Fund, or as otherwise directed in writing by the Department; (3) a COPA Modification; (4) any remedy described in Section 9.08; and (5) if Public Advantage is not evident, termination of the COPA.

Failed Payor Negotiations

- The current Cooperative Agreement language requires Ballad to mediate if it is unable to reach agreement with a payor on renewing a contract. If mediation is unsuccessful, the Agreement requires Ballad to submit to “final offer” arbitration.
- Problems:
  - Timing is not specified
  - Payors are not required to participate
- Timing should be specified and what triggers offering mediation or engaging in arbitration; and what happens if a payor refuses to engage also needs to be specified

Out-of-Network Hospital-Based Physicians

- Ballad should be required to include in all contracts with provider-based physicians (e.g., ER, pathologists, hospitalists, anesthesiologists, radiologists, etc.) a requirement to contract with all of Ballad's "major" payors (as defined in Addendum 1) i.e., a requirement that the physicians are "in-network" with the payor. There needs to be some flexibility in order to assure that payors do not use such a provision to pay unfairly low rates, but even with new legislation about "surprise billing," out of network charges can be a problem especially when the patient has no choice but to use the physician group contracting with Ballad.

State Action on Plans and Plan Amendments

- We need to clarify when a plan or plan amendment is deemed approved if there are no questions or other feedback from the Department.

Records of Medical Staff Membership and Employed Physicians

- Ballad will maintain records so that it can produce a report of an unduplicated count of Medical Staff members by specialty at each of its hospitals. (To the extent that a physician is assigned to more than one specialty, Ballad shall pick one and footnote the other(s). If a physician has privileges at more than one Ballad hospital, Ballad should note where the physician practices principally or the estimated percentage of time at all hospitals where the physician has privileges.)
- Ballad will maintain records so that it can report an unduplicated count of all employed physicians by specialty and location. When an employed physician practices at more than one location, the report will select the primary location and footnote other locations.

Education

- The current Cooperative Agreement speaks to “graduate medical education,” which is a term of art referring to training of physicians who have graduated from medical school. Other portions of the , Cooperative Agreement, however, make clear that spending on training for other health professionals can be credited toward Ballad’s spending obligation. While it is important to add physicians to the region, there are many other shortages, such as physician assistants, nurse practitioners, nurses, certified nursing assistants, etc. While the existing CA has been interpreted to cover more than physician training, making the wording more clear would be an improvement.

Questions