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March 6, 2018

The Honorable Preston Rutledge  
Assistant Secretary  
Employee Benefits Security Administration  
U.S. Department of Labor  
Room N-5655  
200 Constitution Avenue NW  
Washington, D.C. 20210

*Submitted electronically via [www.regulations.gov](http://www.regulations.gov)*

**RE: Definition of “Employer” Under Section 3(5) of ERISA – Association Health Plans (RIN 1210-AB85)**

Dear Assistant Secretary Rutledge:

Blue Cross and Blue Shield of North Carolina (Blue Cross NC) appreciates the opportunity to provide comments on the Proposed Rule: “Definition of ‘Employer’ under Section 3(5) of ERISA—Association Health Plans,” as issued in the Federal Register on January 5, 2018 (83 Fed. Reg. 614) (Proposed Rule).

Blue Cross NC is a single-state insurer serving 3.74 million North Carolinians. Included in that population, Blue Cross NC provides coverage for three self-funded multiple employer welfare arrangements (MEWAs). Blue Cross NC has served 2 of these MEWAs since 2006 and the other since 2009.

Because of our experience administering MEWAs, we understand the importance of regulating association health plans (AHPs) and setting rules to ensure stability in the market and to prevent the proliferation of fraudulent or inadequately capitalized operations. However, Blue Cross NC is concerned that the Proposed Rule may adversely impact some of our legitimate association plans. Therefore, we support grandfathering existing MEWAs and association plans under the rules that exist today and applying changes only to entities formed after the passage of the final regulations.

As they exist today, MEWAs are governed both by Title I of ERISA and applicable State insurance laws. In North Carolina, the State Department of Insurance carefully monitors and regulates the conduct of our self-funded MEWAs. This joint regulation by the Department of Labor and North Carolina Department of Insurance has helped to protect North Carolinians from fraudulent activity, while still allowing for MEWAs to operate successfully in the marketplace.

As drafted, the Proposed Rule would require that existing association health plans meet all the conditions in the Proposed Rule, including the HIPAA/ACA nondiscrimination rules. Blue Cross NC

believes the application of the HIPAA/ACA nondiscrimination rules at the association or plan level as proposed would disrupt the current market practices of small group employers that comprise our existing MEWAs.

To that end, Blue Cross NC believes that the Final Rule should provide the opportunity for existing associations – including MEWAs that are treated as employer sponsors of a single ERISA plan to be grandfathered under current guidelines.

Thank you for considering our comments. Please contact me at Babara.MoralesBurke@bcbsnc.com if you have any questions about our comments.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Morales Burke".

Barbara Morales Burke