

NORTH CAROLINA MEDICAL SOCIETY EMPLOYEE BENEFIT TRUST

March 6, 2018

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor, Room N-5655
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Submitted electronically via www.regulations.gov

Re: RIN 1210-AB85
Definition of Employer Under Section 3(5) of ERISA – Association Health Plans

Ladies and Gentlemen,

I am writing on behalf of the North Carolina Medical Society Employee Benefit Trust (the “NCMS Trust”). The NCMS Trust is sponsored by the North Carolina Medical Society, which is a bona fide professional association that has been in existence for over 100 years (“NCMS”). We appreciate this opportunity to comment on the Proposed Rule regarding the “Definition of ‘Employer’ Under Section 3(5) of ERISA – Association Health Plans,” published in the January 5, 2018 *Federal Register* (the “AHP Proposed Rule”).

The NCMS Trust was designed and always has operated as a group health plan, a self-insured multiple employer welfare arrangement (“MEWA”) under state and federal law, and a single employee welfare benefit plan under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The NCMS Trust is domiciled in North Carolina, licensed as a self-insured MEWA by the North Carolina Department of Insurance, and subject to substantial joint regulation under a combination of federal and state laws such as ERISA and various North Carolina insurance statutes and regulations. The operations of the NCMS Trust are also funded via a qualified tax-exempt Voluntary Employees’ Beneficiary Association (“VEBA”) regulated pursuant to Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the “Code”).

The NCMS Trust began operations in 1998 and currently has 490 participating medical practice employers with 17,400 covered employees and dependents. The NCMS’ objective in sponsoring the NCMS Trust was to empower individual medical practices associated with the NCMS, who are often small employers, to better provide affordable, quality health benefits for their employees and dependents. This objective is consistent with the Department’s intent in proposing the AHP Proposed Rule.

The NCMS Trust supports all well-intentioned efforts to expand access to affordable, quality health benefits. We have been effectively and efficiently accomplishing this goal on behalf of NCMS members for nearly 20 years under the comprehensive state and federal regulatory

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framework in which the NCMS Trust (and other similarly-situated MEWAs) currently operate. We believe that if finalized as proposed, the final rule potentially could change this regulatory framework in significant ways. Entities that are structured and historically have been regulated like the NCMS Trust potentially may be subject to new rules that may overlap and conflict with the existing regulatory scheme. Accordingly, the NCMS Trust and other established MEWAs could be required to make substantial operational and systems modifications that impact our covered employees and dependents.

For these reasons, the NCMS Trust respectfully requests that, to the extent the Department adopts new rules based on the AHP Proposed Rule, you consider grandfathering existing self-funded MEWAs structured and operating as bona fide employer plans and subject to state licensure and regulation from portions of the final rule that conflict with existing regulations. In the event the final rule does not grandfather existing self-funded MEWAs, we respectfully request that it provide guidance as to the applicability of new rule with respect to existing state laws and provide a delayed effective date or a transition period sufficient to allow previously-existing self-funded MEWAs structured and regulated as described in this letter to implement and transition to the new regulatory framework without disruption to covered members and their dependents.

Thank you for the opportunity to comment on the AHP Proposed Rule and for considering our comments. Please do not hesitate to contact me at 919-878-7502 or steven.sawyer@mmicnc.com if you should have questions or we can provide additional information.

Sincerely yours,



Steven W. Sawyer
Sr. Vice President
Corporate Administration