March 5, 2018

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

Submitted electronically via regulations.gov

Re: Definition of "Employer" under Section 3(5) of ERISA – Association Health Plans (RIN1210-AB85)

Dear Assistant Secretary Rutledge:

I am writing on behalf of Health Care Service Corporation (HCSC) to comment on the notice of proposed rulemaking (NPRM) entitled "Definition of 'Employer' under Section 3(5) of ERISA – Association Health Plans."

HCSC is the largest customer-owned health insurance company in the United States. The company provides over 15,000,000 members with employer, individual, Medicare, Medicaid, and Children's Health Insurance Program coverage through its operating divisions including Blue Cross and Blue Shield of Illinois, Blue Cross and Blue Shield of Montana, Blue Cross and Blue Shield of New Mexico, Blue Cross and Blue Shield of Oklahoma, and Blue Cross and Blue Shield of Texas. The majority of our members are enrolled in employer-sponsored coverage.

HCSC believes that everyone, regardless of preexisting conditions, should have access to affordable health care coverage. HCSC shares the serious concerns expressed by our trade associations, the Blue Cross and Blue Shield Association (BCBSA) and America's Health Insurance Plans (AHIP), that many aspects of the NPRM would destabilize the small employer and individual insurance markets and ultimately make coverage less affordable, particularly for those employers with less healthy and older workers. HCSC believes that a much better approach to improve affordability would be for the Administration to work with Congress to enact legislative reforms that would return to the states more of their traditional authority to determine the rules for their small employer markets and provide federally-funded reinsurance that would benefit working owners and others purchasing coverage in the individual market.

In the event that the Department chooses to finalize this rule, it is essential that it adopt the recommendations put forth by BCBSA and AHIP to avoid unintentionally harming affordability for small employers and working owners, creating new opportunities for

fraud, and destabilizing insurance markets. The Department should take care not to create any confusion whatsoever in these regards about the role of state insurance regulators in protecting small employers and working owners.

HCSC wishes to draw particular attention to proposed section 2510.3-5(d), dealing with nondiscrimination based on health status as it relates to employer membership, eligibility for benefits, and premiums and contributions (including the requirement that different employer members be treated as similarly situated). HCSC was pleased that the Department recognized the importance of ensuring association health plans do not engage in discriminatory practices based on health status, building off the longstanding principles from the Health Insurance Portability and Accountability Act. While HCSC does not believe that proposed section 2510.3-5(d) will completely address concerns about affordability and market stability, its inclusion in a final rule and uniform applicability to working owners, small employers, and large employers would tend to mitigate some of the unintended, harmful impacts that otherwise could result. HCSC strongly urges the Department to retain this provision in a final rule.

Further, given the importance of proposed section 2510.3-5(d) in preventing discrimination inside association health plans and mitigating the negative impacts of a final rule on overall market stability, HCSC requests that the Department require compliance with this provision by all association health plans on a uniform basis. For example, the Department could accomplish this by requiring compliance for plan years beginning on or after a certain date, as it typically does for group health plan requirements. HCSC urges the Department to reject requests that certain existing association health plans be permitted to continue discriminatory practices on a permanently "grandfathered" basis or through special compliance dates, years out from a final rule's effective date, that are not uniformly applied to all association health plans. As a practical matter, it would be very challenging for the Department and state insurance regulators to adequately monitor compliance with and enforce any potential grandfathering standard. Ambiguities in such a standard, lack of currently available data on association health plans on which to assess grandfathered status claims, and unclear regulatory roles would create an environment that some association health plans could use to offer coverage in ways that would be inconsistent with a final rule. As such, the resulting situation could be ripe for abuse.

Thank you for the opportunity to provide comments on this NPRM.

Sincerely,

Robert Imes
Vice President, Health Policy (Private Markets)
Health Care Service Corporation