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March 1, 2024

Lisa J. Stevenson
Acting General Counsel
Office of the General Counsel
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

RE: Independence Health Group Advisory Opinion Request

Dear Ms. Stevenson:

On behalf of Independence Blue Cross LLC Political Action Committee (“IBC PAC”), the separate segregated fund of AmeriHealth, Inc., a subsidiary of Independence Health Group, Inc. (“IHG”), we seek an Advisory Opinion finding that IBC PAC is not affiliated with the Blue Cross Blue Shield Association Political Action Committee (“BluePAC”), the separate segregated fund of the Blue Cross Blue Shield Association (“BCBSA”).

IHG is a member and independent licensee of the BCBSA and holds a primary license to use the Blue Cross name and marks. IHG wholly owns AmeriHealth, Inc., which, in turn, wholly owns Independence Blue Cross, LLC (“IBC”) and serves as the connected organization for IBC PAC.¹ IBC holds a controlled affiliate license to use the Blue Cross name and marks. IHG and IBC are subject to substantially similar restrictions and obligations under their respective BCBSA license agreements.² Thus, the statements made herein regarding IHG as a licensee apply equally to IBC. Given that IHG is a member of BCBSA and owns a 100% interest in both AmeriHealth Inc. and IBC, IHG and BCBSA historically have treated IBC PAC and BluePAC as affiliated PACs for the purposes of the Federal Election Campaign Act of 1971, as amended (“FECA”). Please note that another subsidiary of IHG, AmeriHealth Caritas, also maintains a separate segregated fund, AMHP Holdings Corp. Political Action Committee (“AmeriHealth Caritas PAC”). AmeriHealth Caritas is neither a member nor a licensee of

¹ Independence Blue Cross, LLC and its employees manage IBC PAC operations as a connected organization would. Accordingly, the name of IBC PAC complies with the FEC regulations and opinions permitting separate segregated funds, under the foregoing conditions, to bear the name of an LLC subsidiary of its connected organization.

² The main substantive difference between IHG and IBC’s license agreements is that as a BCBSA member, IHG is subject to certain additional conditions and requirements, such as a requirement to pay membership dues.

BCBSA, but is owned and controlled by IHG by virtue of IHG's 61.3% interest in the joint-venture entity that owns AmeriHealth Caritas.³

IHG is a Pennsylvania nonprofit corporation headquartered in Philadelphia, Pennsylvania. Its subsidiaries include, but are not limited to, licensed health insurance companies, health maintenance organizations, and third-party administrators, which offer and/or administer a variety of health benefit plans and services. Under licensing agreements with the BCBSA (the "Agreements"), IHG and certain of its subsidiaries have the exclusive rights to market and sell products utilizing the Blue Cross name and marks in its designated service area, which is the five-county southeastern Pennsylvania region, consisting of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties (please note that IHG and its subsidiaries are not licensed to use the Blue Shield name and marks, which are licensed separately from the Blue Cross name and marks).⁴ However, as discussed in more detail below, the business of IHG and its subsidiaries is operated and governed independently of BCBSA. Moreover, the Agreements strictly set forth the terms of the relationship between IHG and its subsidiaries and the BCBSA; while they require IHG to meet certain standards and requirements, they do not grant the BCBSA formal or informal control or influence over the operations or governance of IHG's overall business operations. Please note that references to IHG incorporate IHG subsidiaries, unless otherwise noted.

Although IHG and BCBSA historically have treated IBC PAC and BluePAC as affiliated PACs, the business relationship between the organizations has evolved to the point where IHG no longer believes that affiliation is necessary under FECA. Specifically, IHG's non-Blue business has steadily grown over the past 30 years and continues to do so. As a result, IHG and BCBSA have developed distinct policy interests, especially in those jurisdictions where IHG conducts non-Blue business, such that continued affiliation is no longer necessary. Accordingly, we ask the Federal Election Commission ("FEC" or "Commission") to find that IBC PAC and BluePAC are not affiliated under FECA. Please note, as reflected in the attached, that BCBSA remains neutral as to this request.

I. Prior Advisory Opinions Regarding Affiliation with BCBSA

The FEC has previously addressed the relationship between BCBSA and its licensees. First, in FEC Advisory Opinion ("AO") 1990-22, BCBSA sought permission to solicit the executive and administrative personnel of its licensees for BluePAC, arguing that the licensees were in the nature of members, subsidiaries, or affiliates of BCBSA. The FEC found that the unique nature of the relationship allowed the conclusion that all of the member licensees were "affiliates of BCBSA, functioning in effect as local units of BCBSA," and allowed BCBSA to solicit the executive and administrative personnel of the licensees as BCBSA had requested.

³ Blue Cross Blue Shield of Michigan owns a 38.7% non-control minority interest in AmeriHealth Caritas.

⁴ IHG and its controlled affiliates currently do not market and sell products under the Blue Cross name and marks outside its designated service area, and they are prohibited from doing so except in certain circumstances with BCBSA's permission.

Then, in AO 1999-39 (the “WellPAC Opinion”), WellPoint Health Networks PAC (“WellPoint PAC”), the separate segregated fund of a BCBSA licensee, asked the FEC to find that WellPoint PAC and BluePAC were no longer affiliated for the purposes of FECA. After examining the relationship between WellPoint and BCBSA, which had evolved from the general relationship between BCBSA and its licensees that the FEC had reviewed in AO 1990-22, the Commission agreed with the requestor that WellPoint PAC was no longer affiliated with BluePAC.

More recently, in AO 2014-11 (the “HCSC Opinion”), the Health Care Service Corporation Employees’ PAC (“HCSC PAC”), also a separate segregated fund of a BCBSA licensee, asked the FEC to find that HCSC PAC and BluePAC were no longer affiliated for the purposes of FECA. Based on reasoning similar to that in the WellPAC opinion, the Commission, after reviewing the evolution of the relationship between the Health Care Services Corporation and BCBSA, agreed with the requester that HCSC PAC was no longer affiliated with BluePAC.

We believe that the relevant facts underlying the WellPAC and HCSC Opinions are similar to those relevant to the analysis of the relationship between IBC PAC and BluePAC and, therefore, that the FEC should conclude that IBC PAC and BluePAC no longer need to be treated as affiliated PACs.

II. The FEC’s Rules on Affiliation

FECA and Commission regulations recognize two types of affiliation. The first is “automatic” affiliation, which provides that committees established by the same corporation; person; or group of persons, including any parent; subsidiary; branch; division; department; or local unit thereof are affiliated. 52 USC § 30116(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii). The regulations further provide that the term “local unit” can include a franchisee or licensee where appropriate. 11 CFR 100.5(g)(2) and 110.3(a)(1)(ii).

In the absence of a legal relationship that gives rise to automatic affiliation, such as that between a parent corporation and its subsidiary, Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one company is an affiliate of another and, therefore, whether their respective PACs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), 11 CFR 110.3(a)(3)(i) and (ii)(A)-(J). Included in these factors are: (A) whether a sponsoring organization owns a controlling interest in the voting stock or securities of another sponsoring organization; (B) whether a sponsoring organization has the authority or ability to direct or participate in the governance of another sponsoring organization through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures; (C) whether a sponsoring organization has the authority or ability to hire, appoint, demote or otherwise control the officers or other decision-making employees of another sponsoring organization; (D) whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees; (E) whether a sponsoring organization has common or overlapping officers or employees with another sponsoring organization which indicates a formal or ongoing relationship between the organizations; (F) whether a sponsoring organization has

any members, officers, or employees who were members, officers, or employees of another sponsoring organization which indicates a formal or ongoing relationship or the creation of a successor entity; (G) whether a sponsoring organization provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization; (H) whether a sponsoring organization causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization; (I) whether a sponsoring organization had an active or significant role in the formation of another sponsoring organization; and (J) whether the committees have similar patterns of contributions which indicates a formal or ongoing relationship between the committees. 11 CFR 110.3(a)(3)(ii)(A)-(J). The list of ten circumstantial factors set out at 11 CFR 110.3(a)(3)(ii) is not an exclusive list as other factors may be considered. See AO 1995-36.

III. Application of the Affiliation Rules to IHG and the BCBSA

As IBC PAC and BluePAC are not sponsored by a single corporation or its subsidiaries, they are not automatically affiliated. Therefore, the Commission may examine certain factors that exist in the relationship between the PACs and their sponsoring entities in order to determine whether the PACs are affiliated. Accordingly, following the discussion of the factors listed in the regulations, we discuss additional facts that demonstrate the independence of IHG from the BCBSA.

A. Controlling Interest

BCBSA and IHG do not have shareholders and neither BCBSA nor IHG maintain any form of equity ownership in the other.

B. Governance

BCBSA enters into license agreements with independent and locally operated companies to operate Blue Cross and Blue Shield plans throughout the United States and abroad. Under licensing agreements between IHG and the BCBSA, IHG has the exclusive rights to market and sell products utilizing the Blue Cross name and marks in southeastern Pennsylvania. The BCBSA makes clear that IHG is owned and operated independently of BCBSA. This assertion is supported by an examination of the relationship between BCBSA and IHG. In fact, one of the BCBSA Membership Standards requires an “independence” disclaimer be included in a licensee’s advertising.

(1) Voting Rights

As noted above, the BCBSA maintains no voting rights in IHG by virtue of ownership of securities. Additionally, the BCBSA maintains no seats on any IHG board or governing body and is not entitled to appoint any individuals to such positions. While it is technically possible for an officer of BCBSA to be elected to the IHG board, no BCBSA officer has held such a position. Additionally, even if a BCBSA officer were to be elected to a position on the IHG board, he or she would be entitled to no greater rights, powers, or privileges than any other board member.

IHG maintains a position on the board of directors of the BCBSA, as does each other Blue Cross and/or Blue Shield licensee. The President and Chief Executive Officer of IHG is the officer entitled to sit on the BCBSA board. The IHG President and CEO enjoys the same voting rights and privileges as each other member of the Board and maintains no special positions with respect to the BCBSA board. Also, the IHG President and CEO currently is a member of three of the Board's standing committees: the Finance and Audit Committee (which he chairs), the Market Solutions Committee, and the Organization and Governance Committee. These committees are all composed solely of Board members and grant each of their members a single vote. Additionally, like all other Blue Cross and/or Blue Shield licensees, IHG, through its President and CEO or his designee, participates in member plan meetings, where member plans make certain governance decisions for the BCBSA. We describe below the composition and powers of the Board and of each of the foregoing Board committees as well as the role of member plan meetings.

BCBSA Board: The BCBSA Board is composed of the CEOs of each of the 33 member plans and the BCBSA President. The Board also elects from the member plan CEOs a Board chair, who serves as a BCBSA officer.⁵ Since at least 1983, the IHG President and CEO has only served as the Board chair once, from November 2015-November 2017.

The Board has the general authority to manage BCBSA's affairs. Its powers include electing the Board chair and Board committee members and the BCBSA president, treasurer, and corporate secretary; granting licenses to member plans to conduct Blue-branded business; amending brand regulations; approving the BCBSA budget; and assessing member dues. However, as described further below, the Board's jurisdiction is circumscribed in that BCBSA bylaws and license agreements grant member plans the authority to collectively make certain governance decisions for the BCBSA.

Board Committees:

Finance and Audit Committee: The Finance and Audit Committee may have between seven and 11 members under its charter. In addition to these members, the chair of the Committee's Cybersecurity Subcommittee may serve on the Committee ex officio. According to the most recent Committee roster, the Committee had nine members.

The Finance and Audit Committee recommends to the Board an annual budget for the BCBSA and monitors the budget that the Board approves. It also assists the Board in fulfilling its oversight responsibilities for its financial reporting process, system of internal control, audit process,

⁵ The Board chair position is the only BCBSA officer position that a member plan CEO can hold. The BCBSA bylaws specifically state that no BCBSA officer, other than the Board chair and BCBSA President, may serve on the BCBSA Board. While the BCBSA bylaws do not specify who is eligible to fill the role of President, it is our understanding that, as a practical matter, it would not be possible for a member plan CEO to also fill that role, and we are not aware of a member plan CEO ever holding the position.

financial performance monitoring process for member plans, and the BCBSA's process for monitoring compliance with laws, regulations, and the BCBSA's Code of Conduct.

Market Solutions Committee: The Market Solutions Committee may have between seven and 11 members under its charter. The Committee's charter provides that in addition to these members, the Committee may have up to five ex officio seats, held by the chairs of the Committee's five subcommittees: the Commercial Markets Implementation Subcommittee, the Government Markets Implementation Subcommittee, the Clinical Advisory Subcommittee, the BlueCard Modernization Oversight Subcommittee, and the Data Use Oversight Subcommittee. In addition, under the BCBSA Corporate Governance Guidelines, former members of a Board committee (other than the Organization and Governance Committee) may serve for an additional one year after the end of their term as an ex officio member if they receive the requisite approval. According to the most recent Committee roster, the Committee had 11 regular members and seven ex officio members (four of these ex officio members are subcommittee chairs; three are former members serving an additional one year on the Committee).

The Market Solutions Committee provides the Board market-based guidance and recommendations on the overall strategic direction of inter-Plan programs, how to improve system performance in key segments, and direction on Blue Cross Blue Shield data assets.

Organization and Governance Committee: The Organization and Governance Committee may have up to 13 members under its charter. According to the most recent Committee roster, the committee had 13 members.

The Organization and Governance Committee provides oversight of the BCBSA's organizational performance and major litigation matters; makes governance recommendations to the Board; and sets BCBSA CEO and officer performance goals and compensation. It also nominates candidates for Chairman of the Board and for membership on standing committees and votes to select appointive officers named by the President of the BCBSA. In addition, the Committee grants licenses to use the Blue Cross and Blue Shield name and marks to eligible entities, reviews and makes recommendations regarding terms in license agreements, and makes determinations of licensees' compliance with licensee agreements.

Please note, the foregoing committees do not have the ability to directly impact the governance, policies, or decision-making by IHG or IBC or other Blue Cross or Blue Shield licensees. However, the Organization and Governance Committee can indirectly impact licensees with respect to their Blue-branded business by

recommending changes to license agreements and by making determinations of licensee compliance with license agreements.

BCBSA Member Plan Meetings: The BCBSA bylaws and license agreements grant member plans the authority to collectively make certain governance decisions, such as amending the BCBSA bylaws and amending and terminating licenses. As noted above, these decisions are made by the CEO or designee of each member plan at meetings of the member plans. Please note, while member plans each cast one unweighted vote at Board meetings, their votes at member plan meetings are weighted based on the dues and royalties they pay to the BCBSA. Based on the latest Board materials from November 2023, out of a total of 102,511 weighted votes cast at member plan meetings, IHG casts 3,230 votes. By way of comparison, Anthem casts 17,628 votes, HCSC 10,624 votes, and Highmark 4,496 votes at member plan meetings.

(2) The Agreements

As BCBSA has no equity ownership of, or voting rights within, IHG, the formal relationship between the organizations is limited to that of a licensor-licensee with respect to IHG's use of the Blue Cross name and marks. The Commission has generally found that licensors and licensees or franchisers and franchisees are not affiliated, unless "one entity exercises pervasive supervision and direction over another entity." See AO 2014-11 (HCSC), p. 7 (citing AO 1999-39 (WellPoint), p. 7). Similar to the relationship between WellPoint and BCBSA and HCSC and BCBSA, here the relationship between IHG and the BCBSA, as governed by the Agreements, exhibits no such level of control. While the Agreements impose restrictions and obligations on operations as a condition of the use of the Blue Cross name and marks, the Agreements do not give BCBSA the ability to supervise, manage, or direct the operation of IHG business. IHG is responsible for how it conducts its business and for the decisions and operations related thereto. The relevant restrictions and obligations contained in the Agreements, the BCBSA Membership Standards (the "Standards"), and the Guidelines to Administer Membership Standards (the "Guidelines") are outlined below. Please note that the restrictions and obligations described below are those specifically applicable to IHG (and not its controlled subsidiaries). However, IHG's controlled subsidiaries that are licensed to use the Blue Cross name and marks are subject to substantially similar restrictions and obligations under their respective license agreements.

(a) the Agreements restrict the geographic areas in which IHG is permitted to use the Blue Cross name and marks; however, IHG is able to offer non-Blue branded products and services in other areas and does, in fact, operate multiple non-Blue branded subsidiaries, including AmeriHealth Insurance Company of New Jersey and AmeriHealth HMO, Inc. (which offer HMO and PPO coverage across New Jersey) and AmeriHealth Administrators, Inc. (a licensed provider of third-party administration services in 46 states and tribal nations across the western U.S.) and numerous other businesses in several states;

(b) To the extent that IHG offers Blue Cross-branded products and services through its subsidiaries, the Agreements require that IHG maintain definitive control⁶ over such subsidiaries; however, the Agreements do not impact IHG’s relationships with other subsidiaries and affiliates not engaged in Blue Cross-branded business in the same manner;

(c) IHG may not cause or permit an entity other than another BCBSA licensee to obtain control of IHG or to acquire a substantial portion of its assets related to Blue Cross licensed services;

(d) IHG must pay its BCBSA dues and maintain its status as a member in good standing of BCBSA;

(e) IHG may only display the Blue Cross name and marks in the form, style, and manner prescribed by BCBSA;

(f) IHG must maintain a governing board that is composed of a majority of members who are: (1) independent from IHG and any entity controlled by IHG⁷, (2) neither employees of, nor holders of financial interests in, a health care provider, (3) not members of a profession that provides health care services, and (4) not directors, officers, partners, or employees of an organization that primarily sells health care services; however, apart from these limited qualifications, IHG has discretion over all board appointments and BCBSA has no authority to influence the selections;

⁶ The Blue Cross License Agreement requires a member plan to have bona fide control over its controlled affiliates licensed to use the Blue Cross name and marks. While the Agreement does not impose a single standard of bona fide control for all controlled affiliates, below is a summary of its main requirements. Bona fide control requires, at a minimum, the legal authority, directly or indirectly through wholly owned subsidiaries, (i) to select members of the controlled affiliate’s governing body having at least 50% voting control thereof (and in some cases 100% voting control thereof); (ii) to prevent any changes in the articles of incorporations, bylaws, or other establishing or governing documents of the controlled affiliate with which the plan(s) does not concur; and (iii) to exercise full control over the policy and operations of the controlled affiliate or control that is at least equal to that exercised by others (jointly or individually).

⁷ While the Guidelines list certain factors that member plans can consider in developing their definition of “independence” as it relates to directors, IHG is given the discretion under the Agreements to develop its own definition. Under the IHG bylaws, an “independent” director is a director with respect to whom the IHG Board’s Governance Committee has affirmatively determined has no material relationship with IHG or a subsidiary (other than as a director). A director may not be deemed independent if any of the following are true:

1. Within the prior 12 months, the director has been an employee, or an immediate family member has been an officer, of IHG or a subsidiary.
2. Within the prior 12 months, the director or an immediate family member has received direct compensation in excess of a specified dollar limit set by the IHG Board from IHG and its subsidiaries, other than Board member fees and pension benefits or other forms of deferred compensation for prior service (provided that such compensation is not contingent upon continued service).
3. The director or an immediate family member is a director, officer, or owner of more than a 5% interest in another company which during the current or past fiscal year received payments under contracts with IHG and its subsidiaries that exceed a specified dollar limit set by the IHG Board.
4. The director is an employee of, or he or she or an immediate family member has within the prior 12 months been a partner, shareholder, or equity member of, a firm that acts as IHG’s internal or external auditor.

(g) IHG is required to implement compliance and ethics policies and procedures applicable to directors, officers, and employees. The Guidelines specify the elements that must be addressed by these policies, and, in some instances, require certain substantive measures be implemented, but largely leave the details of implementation to IHG⁸;

(h) IHG must maintain adequate financial resources to operate effectively and demonstrate this by satisfying certain capital and liquidity requirements. IHG is required to engage an independent CPA to conduct an annual audit and provide an opinion expressing no doubts as to IHG's ability to continue as a going concern;

(i) IHG must operate in a manner responsive to customer needs and requirements as measured by enrollment thresholds and other metrics that IHG must meet or exceed;

(j) IHG must permit BCBSA access to its books and records, as well as provide certain reports and audits regarding IHG's compliance with the Agreements, Standards, and Guidelines and its finances;

(k) IHG is required to participate in national programs that are adopted by the various members of BCBSA and designed to provide portability of membership between the members' plans and to facilitate claims-processing for customers receiving benefits outside of IHG's service area;

(l) when contracting with third parties or making public statements, IHG must disclose (i) the independent nature of IHG and every other BCBSA member plan, (ii) the structure of the Blue Cross and Blue Shield System, and (iii) if IHG falls below certain financial standards, its financial condition;

(m) IHG must cooperate with the BCBSA board and a BCBSA committee to address certain performance problems if they arise;

(n) IHG must obtain a rating of its financial strength from a BCBSA-approved independent rating agency;

(o) IHG must use its best efforts to promote and build the value of the Blue Cross name and marks in that at least 80% of the revenue generated by IHG (and its controlled subsidiaries) attributable to health care plans and related services and hospital services offered within IHG's designated service area of the five-county southeastern Pennsylvania region (*i.e.*, its local revenue) must be sold, marketed, administered, or underwritten under the Blue Cross name and marks. However, there are no other rules under the Agreements,

⁸ For example, the Guidelines at their most specific require that standards of conduct for directors, officers, and employees include prohibitions on using corporate resources and opportunities for personal gain, the obligation to maintain the confidentiality of certain information, etc. In other instances, the Guidelines mandate only that certain systems be put in place by IHG – *i.e.*, requiring a system to respond to allegations of improper/illegal activities and the development and implementation of compliance training programs — without mandating the details of such systems.

Standards, and Guidelines that set standards regarding the percentage of IHG's (and its controlled subsidiaries') revenue that must come from Blue-branded business; and

(p) IHG may not rent or otherwise make available any provider network (or portion thereof) to a national competitor if the Blue Cross name and marks are used in any way with such network.

The fact that IHG is permitted to, and does in fact, engage in various other businesses, separate and apart from its Blue Cross-branded businesses, is indicative of IHG's independence from BCBSA as a separate business entity. Indeed, the fact that IHG is not required to conduct its insurance and related business exclusively under the Blue Cross name and marks strongly weighs against finding an affiliated relationship, as the Commission found in the WellPAC and HCSC opinions.

While IHG must comply with the above requirements to continue to offer Blue Cross-branded products and services in southeastern Pennsylvania, as noted above, IHG directs its operations and is responsible for how it conducts its business. The central purpose of these requirements is to protect the integrity and value of the Blue Cross name and marks, rather than to control specific aspects of IHG's business operations. As such, the relationship between BCBSA and IHG is unlike those licensee-licensor or franchisee-franchisor relationships referenced in the WellPAC Opinion, which involved "pervasive supervision and direction" and were thus found by the Commission to create an affiliation.

C. Hiring Authority

BCBSA does not have the authority to hire, appoint, demote, or otherwise control the officers or other decision-making employees of IHG. BCBSA has elective and appointive officers. Elective officers are elected by the Board, while appointive officers are appointed by the President of the BCBSA, with the advice and consent of the Organization and Governance Committee. IHG's authority to select or otherwise control officers is limited to the single vote it casts as a member of the Board and of the Organization and Governance Committee.

D. Common Membership

IHG and BCBSA do not have common members.

E. Common Officers or Employees

IHG and BCBSA do not have common officers or employees.

F. Former Officers or Employees

There are no formal arrangements by which employees are transferred or seconded from one company to the other or formal arrangements or programs by which IHG hires former BCBSA officers. Indeed, none of IHG's officers and to its knowledge none of its employees are former BCBSA employees.

G. Providing Funds or Goods

As discussed above, BCBSA provides IHG the exclusive rights to market and sell products under the Blue Cross name and marks in southeastern Pennsylvania. In exchange, IHG pays BCBSA licensing and membership fees, and it and its controlled subsidiaries must use the Blue Cross name and marks to generate at least 80% of its local revenue attributable to health care plans and related services offered within southeastern Pennsylvania.

In the HCSC opinion, the Commission stated that a similar arrangement between BCBSA and HCSC weighed in favor of finding that their PACs are affiliated. However, it also noted that the Commission has repeatedly held that negotiated business arrangements between two entities do not alone necessarily rise to the level of affiliation. *See* [AO 2014-11 \(citing AO 2012-21 and AO 1996-23\)](#). In addition, it concluded that in the case of HCSC, all the other circumstantial factors weighed against finding affiliation, outweighing this one factor.

Moreover, this factor in the context of the IHG-BCBSA relationship is arguably less suggestive of a finding of affiliation than was the case in the HCSC opinion, given that the facts in that opinion stated that HCSC used the Blue Cross and Blue Shield names and marks in five states (Illinois, Montana, New Mexico, Oklahoma, and Texas), while IHG uses the Blue Cross name and marks in southeastern Pennsylvania.

Also, the BCBSA provides certain administrative services to member plans, such as IHG, that offer healthcare benefits to eligible federal employees, retirees, and their dependents pursuant to a BCBSA contract with the Office of Personnel Management (“OPM”). These administrative services are not provided to all BCBSA member plans, but rather only to those plans participating in the OPM contract, in order to standardize the benefits provided by member plans to beneficiaries under this contract.

Additionally, IBC and the AmeriHealth companies employ and retain their own lobbyists to advocate on their behalf. While these lobbyists may coordinate from time to time with BCBSA and its lobbying team, IHG does not rely on BCBSA for lobbying activities.

H. Arranging for the Provision of Funds or Goods

BCBSA offers IHG and other membership plans certain voluntary contractual arrangements with vendors such as AT&T, Xerox, and Hertz, but these services are insubstantial and are available to all Blue Cross and/or Blue Shield licensees.

I. Formation

IHG was not formed by the BCBSA. IHG’s predecessor, IBC, was formed in 1938; the current BCBSA was not formed until 1982. In addition, BCBSA was not involved in the formation of IBC PAC.

Also, IHG had no role in forming BCBSA. In addition, while IHG conducts its business in southeastern Pennsylvania under the Blue Cross name and marks, it currently operates a variety of other businesses across the U.S. that are not affiliated in any way with Blue Cross and that are not governed by IHG’s licensing relationship with BCBSA.

J. Contribution Patterns

As IHG and BCBSA have been complying with the restrictions applicable to affiliated organizations for the purpose of FECA, such as sharing a common contribution limit, it would have been lawful for each to coordinate its activities with the other and cross-solicit the restricted class of the other for PAC contributions. However, BluePAC does not solicit or receive contributions from IHG’s restricted class and IBC PAC does not solicit or receive contributions from BCBSA’s restricted class. In addition, IBC PAC does communicate with BluePAC regarding contributions to ensure compliance with campaign finance laws and regulations, given the fact that the committees are currently characterized as affiliated.

IBC PAC and BluePAC seldom contribute to the same candidates or political committees, and to the extent that they do, the overlap is most likely the result of both corporations’ interest in insurance and health care issues and does not indicate a formal or ongoing relationship between the committees. Below is a breakdown of the PACs’ contributions between January 1, 2015 and December 31, 2023, showing the total number of federal committees that received contributions from both PACs as well as the total number of federal committees that received contributions from either PAC during the specified time periods below.

Time Period	Number of Federal Committees that Received Contributions from Both PACs	Number of Federal Committees that Received Contributions from Either PAC
Jan. 1, 2015-Dec. 31, 2016	14	293
Jan. 1, 2017-Dec. 31, 2018	27	293
Jan. 1, 2019-Dec. 31, 2020	31	247
Jan. 1, 2021-Dec. 31, 2022	23	221
Jan. 1, 2023-Dec. 31, 2023	15	197

K. Context of the Overall Relationship between Entities

When the Commission assesses whether PACs are affiliated based on circumstantial factors, it examines, in addition to the enumerated factors discussed above, the “context of the overall relationship” between the sponsoring entities. The context of the overall relationship between IHG and BCBSA further demonstrates why the entities’ PACs should not be deemed affiliated for the purposes of FECA. The entities’ relationship has evolved such that IHG now has a substantial and growing portfolio of non-Blue subsidiaries with a diverse set of business models, geographic footprints, and policy interests and which, in several cases, compete directly against Blue businesses.

Although IHG’s Blue business remains an important part of its business model, as noted above, it has significant non-Blue business. Since the 1990s, IHG and its predecessor, Independence Blue Cross, have focused on the development and growth of non-Blue business. In the past 10 years alone, IHG has invested \$1.1 billion in its non-Blue businesses, and as of

December 31, 2022, its capital in non-Blue businesses totaled \$2.7 billion.⁹ IHG’s non-Blue business is an increasingly important part of its corporate strategy and represents a significant proportion of its total business. In 2022, IHG generated \$13.1 billion in revenue from its non-Blue businesses, representing 48% of its total revenue¹⁰, and it had 5.6 million non-Blue members, representing 67% of its total membership. IHG continues to make significant investments in its non-Blue businesses, and it expects the share of its revenue and membership attributable to its non-Blue businesses to continue to grow as a result.

IHG’s non-Blue businesses are also well diversified, offering a wide range of healthcare products and services. For example, AmeriHealth Caritas, IHG’s largest subsidiary, offers managed Medicaid plans, special needs programs, and long-term care services and support, and it recently launched consumer exchange plans. IHG also has a number of non-health insurance subsidiaries. AmeriHealth Administrators, Inc. (“AHA”), a wholly owned subsidiary of IHG, provides third-party administration and related services. Tandigm Health LLC, a subsidiary majority-owned by IHG, provides population health services to physicians and healthcare systems.

IHG’s non-Blue businesses are also geographically diverse. While IHG sells Blue Cross-branded products and services in southeastern Pennsylvania, its subsidiaries operate in nearly all 50 states. In particular, AmeriHealth Caritas and its subsidiaries operate in nine states – Delaware, Florida, Louisiana, Michigan, New Hampshire, North Carolina, Ohio, Pennsylvania, and South Carolina – and the District of Columbia, with the possibility of expanding into several additional states in the future, and AHA operates in 46 states and in tribal nations across the United States.

IHG’s non-Blue businesses also compete against Blue businesses across the U.S. Of note, AmeriHealth Caritas and its subsidiaries compete against Blue plans in seven of the nine states in which they operate, plus the District of Columbia. In addition, the AmeriHealth Insurance Company of New Jersey and AmeriHealth HMO, Inc. (the “AmeriHealth New Jersey Companies”), which provide health insurance products in New Jersey, compete against a Blue plan in the individual Affordable Care Act (“ACA”) market as well as in the employer group market.

IHG’s non-Blue businesses also have a diverse set of policy interests, many of which are distinct from those of BCBSA. As IHG’s business and geographic footprint have expanded, so has its policy interests, as new businesses and new markets present their own unique policy issues and strategy concerns that may be unrelated to or, in some cases, divergent from those of BCBSA. Highlighting the desire to advance distinct policy objectives,

⁹ Please note, it is not feasible for IHG to provide, as a point of comparison, total investment and capital figures for its Blue-branded business, given such business, which is longstanding in nature, does not require readily identifiable capital investments similar to those made into businesses expanding into providing non-Blue-branded products and services. However, as a frame of reference, IHG’s total equity across the enterprise was approximately \$4.7 billion, as of December 31, 2022.

¹⁰ Please note the investment and revenue figures are estimated using reasonable allocation methodologies for businesses that engage in both Blue and non-Blue business.

AmeriHealth Caritas recently established its own separate segregated fund to support candidates whose policies and positions align with its own.

To further demonstrate IHG's diversifying business, below is a brief description of a number of IHG subsidiaries and other investments.

AmeriHealth Administrators, Inc. ("AHA")

AHA, which is a wholly owned subsidiary of IHG, is licensed to provide third-party administration and related services. As noted above, it operates in 46 states as well as in tribal nations across the western United States. In 2022, the company had \$49 million in total revenue and 643,000 members.

AmeriHealth Caritas Health Plan

AmeriHealth Caritas Health Plan is a joint venture of IHG and Blue Cross Blue Shield of Michigan, in which IHG holds a 61.3% ownership interest. As noted above, it offers managed Medicaid plans, special needs programs, and long-term care services and support and recently launched consumer exchange programs. The company has 25 subsidiaries; it and its subsidiaries operate in nine states and the District of Columbia, with the possibility of expanding into several additional states in the future. In 2022, the company had total revenue of \$11.9 billion (44% of IHG's total revenue) and 4.7 million members (57% of IHG's total membership). As noted above, AmeriHealth Caritas has recently established its own separate segregated fund.

AmeriHealth New Jersey Companies

The AmeriHealth New Jersey Companies are subsidiaries of IHG. AmeriHealth Insurance Company of New Jersey, which provides health insurance, and AmeriHealth HMO, Inc., which provides HMO products, are well-established parts of the New Jersey market. In 2022, the companies had \$1.1 billion in total revenue and 213,000 members.

Tandigm Health LLC

Tandigm Health LLC is a joint venture of IHG and the University of Pennsylvania, in which IHG holds a 72.6% ownership interest. The company provides population services and has contracts with around 400 primary care physicians who support company programs and initiatives. It also has seven subsidiaries, each with its own unique focus.



Conclusion

While IHG and BCBSA have historically treated IBC PAC and BluePAC as affiliated PACs for the purposes of FECA, the relationship between the organizations has evolved such that their PACs should no longer be treated as affiliated. As discussed above, IBC PAC and BluePAC are not *per se* affiliated, and nearly all, if not all, of the enumerated circumstantial factors weigh against finding that the PACs are affiliated. Significantly, the context of the overall relationship between IHG and BCBSA shows that IHG now has a substantial and growing portfolio of non-Blue subsidiaries, with diverse business models, geographic footprints,

and policy interests. Accordingly, we respectfully request that the Commission find that IBC PAC and BluePAC are no longer affiliated for the purposes of FECA.

Please let us know if you have any questions regarding this request.

Sincerely,



Charles M. Ricciardelli
Samuel Rothbloom

Attachment

Cc: Robert Knop
Cheryl Hemsley
Joanna Waldstreicher
Sarah Peck



February 21, 2024

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RE: Independence Health Group Advisory Opinion Request

Dear Ms. Stevenson,

I have reviewed the attached letter from Independence Health Group on behalf of Independence Blue Cross LLC PAC ("IBC PAC") seeking an Advisory Opinion finding that IBC PAC is not affiliated with the Blue Cross and Blue Shield Association PAC ("BluePAC"), the separate segregated fund of the Blue Cross and Blue Shield Association ("BCBSA"). BCBSA takes no position on the facts and law contained therein and consequently remains neutral as to the merits of this request.

Sincerely,

A handwritten signature in black ink that reads "Kim A. Keck".

Kim A. Keck
President & Chief Executive Officer
Blue Cross Blue Shield Association