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FEDERAL ELECTION COMMISSION  
Washington, DC

**AGENDA DOCUMENT NO. 24-18-A**  
**AGENDA ITEM**  
**For meeting of May 1, 2024**

April 24, 2024

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*  
Acting General Counsel

Neven F. Stipanovic *NFS*  
Associate General Counsel

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Attorney

Subject: AO 2024-04 (Independence Blue Cross LLC Political Action Committee) –  
Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on Tuesday, April 30, 2024.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2024-04  
2  
3 Charles M. Ricciardelli, Esq.  
4 Samuel Rothbloom, Esq.  
5 Skadden, Arps, Slate, Meagher & Flom LLP  
6 1440 New York Avenue, N.W.  
7 Washington, D.C. 2005-2111  
8

**DRAFT A**

9 Dear Messrs. Ricciardelli and Rothbloom:

10 We are responding to your advisory opinion request on behalf of Independence Blue  
11 Cross LLC Political Action Committee (“IBC PAC”), the separate segregated fund (“SSF”) of  
12 AmeriHealth, Inc., a subsidiary of Independence Health Group, Inc. (“IHG”), concerning the  
13 application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and  
14 Commission regulations to the affiliation status of IBC PAC and the Blue Cross Blue Shield  
15 Association (“BCBSA”), and its SSF, the Blue Cross Blue Shield Association Political Action  
16 Committee (“BluePAC”).

17 The Commission concludes that IHG and BCBSA, and their respective SSFs, are no  
18 longer affiliated.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on March 1,  
21 2024.

22 IHG is a member and independent licensee of BCBSA and holds a primary license to use  
23 the Blue Cross name and marks.<sup>1</sup> IHG wholly owns AmeriHealth, Inc., which serves as the  
24 connected organization for IBC PAC.<sup>2</sup> AmeriHealth, Inc. also wholly owns Independence Blue  
25 Cross, LLC (“IBC”), which holds a controlled affiliate license to use the Blue Cross name and

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<sup>1</sup> See Advisory Opinion Request (“AOR”) at AOR001.

<sup>2</sup> See *id.*

1 marks.<sup>3</sup> Historically, IHG and BCBSA have treated IBC PAC and BluePAC as affiliated under  
2 the Act because IHG is a BCBSA member and owns a 100% interest in AmeriHealth, Inc. and  
3 IBC.<sup>4</sup>

4 IHG is a Pennsylvania nonprofit corporation, which, along with some of its subsidiaries,<sup>5</sup>  
5 hold licensing agreements with BCBSA (the “Agreements”).<sup>6</sup> These Agreements provide IHG  
6 with the exclusive rights to market and sell products utilizing the Blue Cross name and marks in  
7 its designated service area: Bucks, Montgomery, Philadelphia, Chester, and Delaware counties,  
8 which, together, comprise the southeastern tip of Pennsylvania.<sup>7</sup> IHG does not market and sell  
9 products under the Blue Cross name and marks outside of this designated service area.<sup>8</sup>

10 IHG does not exclusively operate BCBSA business (“Blue business”).<sup>9</sup> It engages in  
11 “well diversified” “non-Blue” business, which “offer[s] a wide range of healthcare products and  
12 services” that includes, but is not limited to, the provision of health insurance.<sup>10</sup> For instance,

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<sup>3</sup> *See id.* Because IHG and IBC are subject to substantially similar restrictions and obligations under their respective BCBSA license agreements, the facts presented about IHG as a licensee apply equally to IBC. *See id.* The primary substantive difference between IHG and IBC’s respective license agreements is that, as a BCBSA member, IHG is subject to additional conditions and requirements, such as paying membership dues. *See* AOR001 n.2.

<sup>4</sup> *See* AOR001.

<sup>5</sup> Like IBC PAC’s request, this advisory opinion’s references to IHG incorporate IHG subsidiaries, unless otherwise noted. *See* AOR002.

<sup>6</sup> *See* AOR001-2.

<sup>7</sup> *See id.*; *see also* *Cnty. Type 10 Maps*, Pa. Dep’t of Transp., <https://www.penndot.pa.gov/ProjectAndPrograms/Planning/Maps/pages/county-type-10.aspx> (last visited Mar. 26, 2024)

<sup>8</sup> *See* AOR002 n.4.

<sup>9</sup> *See* AOR012-14.

<sup>10</sup> *See id.*

1 IHG has numerous non-health insurance subsidiaries, including AmeriHealth Administrators,  
2 Inc., a wholly owned subsidiary of IHG that provides third-party administration and related  
3 services, and Tandigm Health LLC, a majority-owned subsidiary of IHG that provides  
4 population-health services to physicians and healthcare systems.<sup>11</sup> IHG’s non-Blue business also  
5 extends outside of southeastern Pennsylvania, into nearly all fifty states, the District of  
6 Columbia, and tribal territory.<sup>12</sup>

7 By letter from BCBSA President and CEO, “BCBSA takes no position on the facts and  
8 law contained” in IBC PAC’s request that the Commission consider IHG and BCBSA, and their  
9 respective SSFs, as disaffiliated and “remains neutral as to the merits of this request.”<sup>13</sup>

10 ***Questions Presented***

11 *Are IHG and BCBSA, and their respective SSFs, no longer affiliated for purposes of the*  
12 *Act and Commission regulations?*

13 ***Legal Analysis and Conclusions***

14 Yes, IHG and BCBSA, and their respective SSFs, are no longer affiliated under the Act  
15 and Commission regulations.

16 Political committees, including SSFs, are “affiliated” if they are established, financed,  
17 maintained, or controlled by the same corporation, labor organization, person, or group of  
18 persons, including any parent, subsidiary, branch, division, department, or local unit thereof.<sup>14</sup>

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<sup>11</sup> See AOR012-13.

<sup>12</sup> See *id.*

<sup>13</sup> See AOR016.

<sup>14</sup> See 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii).

1 For purposes of the Act’s contribution limits, contributions made to or by affiliated political  
2 committees are considered to have been made to or by a single political committee.<sup>15</sup>

3 Commission regulations identify certain committees that are *per se* affiliated, such as  
4 those established, financed, maintained, or controlled by a single corporation and its  
5 subsidiaries.<sup>16</sup> The Commission has previously found that a parent-subsidary relationship, and  
6 thus *per se* affiliation, is created when a parent company owns a majority interest in another  
7 organization.<sup>17</sup> None of these criteria are met here, and so IHG and BSBSA are not *per se*  
8 affiliated.

9 In the absence of *per se* affiliation, the Commission examines “the relationship between  
10 organizations that sponsor committees, between the committees themselves, [and] between one  
11 sponsoring organization and a committee established by another organization to determine  
12 whether committees are affiliated.”<sup>18</sup> Commission regulations provide a non-exhaustive list of  
13 ten “circumstantial factors” to be considered “in the context of the overall relationship” in order  
14 to determine whether the respective entities are appropriately considered affiliated.<sup>19</sup>

15 In Advisory Opinion 1990-22 (BCBSA), the Commission concluded that BCBSA is  
16 affiliated with each of its licensed plans in the United States. Although IHG is a BCBSA  
17 licensee, the request asserts that, in the intervening three decades, “the business relationship

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<sup>15</sup> See 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1).

<sup>16</sup> See 11 C.F.R. §§ 100.5(g)(3)(i), 110.3(a)(2)(i).

<sup>17</sup> Compare Advisory Opinion 2003-28 (Horizon Lines) at 1-3 (finding *per se* affiliation where corporation owned controlling interest in LLC), with Advisory Opinion 2003-21 (Lehman Brothers) at 2 (finding that minority ownership interest in corporation does not create parent-subsidary relationship).

<sup>18</sup> See 11 C.F.R. § 100.5(g)(4)(i).

<sup>19</sup> See 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(i)-(ii); see also Advisory Opinion 1999-39 (WellPAC) at 2.

1 between the organizations has evolved to the point where IHG no longer believes that affiliation  
2 is necessary under FECA.”<sup>20</sup> The Commission considers the ten circumstantial factors in turn.

3 (A) *Controlling Interest*

4 This factor considers whether a sponsoring organization owns a controlling interest in the  
5 voting stock or securities of the other sponsoring organization.<sup>21</sup> Because IHG and BCBSA  
6 neither have shareholders nor maintain any equity ownership in the other, this factor weighs in  
7 favor of concluding that these entities are not affiliated.<sup>22</sup>

8 (B) *Governance*

9 This factor concerns whether a sponsoring organization has the authority or ability to  
10 direct or participate in the governance of the other sponsoring organization or its committee  
11 through provisions of constitutions, bylaws, contracts, or other rules, or through formal or  
12 informal practices or procedures.<sup>23</sup>

13 BCBSA maintains no seats on any IHG board and no voting rights in IHG through  
14 ownership of securities.<sup>24</sup>

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<sup>20</sup> See AOR002-3 (pointing to Advisory Opinion 1999-39 (WellPAC), which found that changed circumstances principally stemming from change in BCBSA licensee’s corporate structure and ownership rendered the licensee’s SSF no longer affiliated with BCBSA’s, and Advisory Opinion 2014-11 (HCSC), which found that the SSFs of BCBSA licensee and BCBSA were no longer affiliated when majority of circumstantial factors did not support finding affiliation).

<sup>21</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(A), 110.3(a)(3)(ii)(A).

<sup>22</sup> See AOR004; Advisory Opinion 2014-11 (HCSC) at 4.

<sup>23</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B).

<sup>24</sup> See AOR004. Technically, an officer of BCBSA could be elected to the IHG board, but that has never occurred. See *id.*

1 IHG, like every BCBSA member plan, maintains a position on BCBSA’s board of  
2 directors.<sup>25</sup> IHG’s President and CEO sits on BCBSA’s 34-member board, which is composed  
3 of the CEOs of each of its 33 members plans plus the BCBSA President.<sup>26</sup> The IHG board  
4 member enjoys the same voting rights and privileges as each other board member and maintains  
5 no special positions with respect to the board.<sup>27</sup> In addition to generally managing BCBSA  
6 affairs, the BCBSA board elects the board chair, board committee members, and the BCBSA  
7 president, treasurer, and corporate secretary; grants licenses to member plans to conduct Blue  
8 business; amends brand regulations; approves the BCBSA budget; and assesses member dues.<sup>28</sup>

9 The IHG member of the BCBSA board currently sits on three standing committees:  
10 (1) the finance and audit committee, which he chairs; (2) the market solutions committee; and  
11 (3) the organization and governance committee.<sup>29</sup> These committees are composed solely of  
12 BCBSA board members, each of which has a single vote.<sup>30</sup> None of these committees “have the  
13 ability to directly impact the governance, policies, or decision-making by IHG or IBC or other  
14 Blue Cross or Blue Shield licensees.”<sup>31</sup> That said, the organization and governance committee  
15 “can indirectly impact licensees with respect to their Blue-branded business by recommending

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<sup>25</sup> See AOR005.

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> See *id.* The IHG President and CEO may be elected as board chair or BCBSA president. See AOR005 & n.5. Since at least 1983, the IHG President and CEO has served as the board chair only once, from November 2015 to November 2017, and has never served as board president. See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> See AOR006.

1 changes to license agreements and by making determinations of licensee compliance with license  
2 agreements.”<sup>32</sup>

3         Additionally, BCBSA bylaws and license agreements permit member plans, like IHG, to  
4 make certain governance decisions, such as amending the BCBSA bylaws and amending and  
5 terminating licenses, collectively, at member plan meetings.<sup>33</sup> Each member plan sends one  
6 designee to these meetings, where votes are weighted based on the dues and royalties they pay to  
7 BCBSA.<sup>34</sup> As of November 2023, IHG casts 3,230 votes out of a total of 102,511 weighted  
8 votes, amounting to 3.15% of the vote share.<sup>35</sup>

9         Lastly, “the formal relationship between the organizations is limited to that of a licensor-  
10 licensee with respect to IHG’s use of the Blue Cross name and marks.”<sup>36</sup> BCBSA enters into  
11 license agreements with independent and locally operated companies to operate Blue Cross and  
12 Blue Shield plans.<sup>37</sup> Still, the Agreements between the parties limit the categories of persons  
13 who may populate the majority of IHG’s governing board.<sup>38</sup> Even with that contractual

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<sup>32</sup>         *See* AOR006-7.

<sup>33</sup>         *See* AOR007.

<sup>34</sup>         *See id.*

<sup>35</sup>         *See id.*

<sup>36</sup>         *See id.*

<sup>37</sup>         *See* AOR004.

<sup>38</sup>         *See* AOR008. Specifically, “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 IHG, (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.” *See id.*



1 limitation, “IHG has discretion over all board appointments and BCBSA has no authority to  
2 influence the selections.”<sup>39</sup>

3         Based on the foregoing, IHG and BCBSA each exercise some degree of influence in the  
4 governance over the other. But in the context of licensees and franchises, the Commission  
5 generally has not found affiliation absent circumstances indicating that “one entity exercises  
6 pervasive supervision and direction over the daily operations and business policies of another  
7 entity.”<sup>40</sup> Here, IHG’s representation on the BCBSA board is just one of 34 equal-voting-right  
8 members, and its weighted voting rights during member plan meetings amount to only 3.15% of  
9 the total votes. The Commission previously has found that the governance factor indicates  
10 disaffiliation where, like here, one entity controls only a small minority of seats on the other’s  
11 board of directors.<sup>41</sup> And though the BCBSA licensing agreement with IHG requires it to  
12 exclude certain categories of persons from its board, BCBSA plays no role in the actual selection  
13 of IHG board members. Therefore, BCBSA does not exercise pervasive supervision and  
14 direction over the daily governance of IHG.

15         (C) *Hiring Authority*

16         This factor concerns whether a sponsoring organization has the authority or ability to  
17 hire, appoint, demote, or otherwise control the officers or other decision-making employees of

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<sup>39</sup>         *See id.*

<sup>40</sup>         *See* Advisory Opinion 2014-11 (HCSC) at 7 (citing Advisory Opinion 1999-39 (WellPAC) at 7).

<sup>41</sup>         *See* Advisory Opinion 2014-11 (HCSC) at 5 (finding that “BCBSA’s complete absence of representation on [member plan’s] governing board and the very limited (1-in-38) role played by [member plan] in BCBSA’s governing board weigh against finding that the entities’ SSFs are affiliated”); Advisory Opinion 2014-21 (Cambia) at 5 (concluding that BCBSA’s “complete absence of representation on [licensee’s] governing board and the very limited (2-in-38) role played by [licensee] in Blue Cross’s governing board weigh against finding that the entities’ SSFs are affiliated”).

1 the other sponsoring organization.<sup>42</sup> Here, “BCBSA does not have the authority to hire, appoint,  
2 demote, or otherwise control the officers or other decision-making employees of IHG.”<sup>43</sup> IHG,  
3 as a member of the BCBSA board, casts one vote for elective officers.<sup>44</sup> Additionally, as a  
4 member of the board’s 13-member organization and governance committee, IHG casts one vote  
5 to confirm appointive officers selected by the BCBSA president.<sup>45</sup> The Commission previously  
6 concluded that controlling only a minority interest on the board of directors indicates that the  
7 sponsoring organization lacked the authority to take hiring actions on its own, and, thus, this  
8 factor weighed against finding affiliation.<sup>46</sup> IHG’s additional membership on the organization  
9 and governance committee does not alter that weight, given that it casts only 1 of 13 votes to  
10 confirm the appointment made by the BCBSA president.

11 (D) *Common Membership*

12 This factor considers whether a sponsoring organization has common or overlapping  
13 membership with the other sponsoring organization that indicates a formal or ongoing  
14 relationship between the sponsoring organizations.<sup>47</sup> IHG and BCBSA have no common  
15 members.<sup>48</sup> This factor therefore weighs in favor of finding that the entities and their SSFs are  
16 not affiliated.<sup>49</sup>

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<sup>42</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(C), 110.3(a)(3)(ii)(C).

<sup>43</sup> See AOR010.

<sup>44</sup> See AOR005, 10.

<sup>45</sup> See AOR006, 10.

<sup>46</sup> See Advisory Opinion 2016-02 (Enable) at 7.

<sup>47</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D).

<sup>48</sup> See AOR010.

<sup>49</sup> See Advisory Opinion 2014-11 (HCSC) at 5.

1           (E)     *Common Officers or Employees*

2           This factor considers whether sponsoring organizations have common or overlapping  
3 officers or employees, indicating a formal or ongoing relationship between the organizations.<sup>50</sup>  
4 IHG and BCBSA have no overlapping officers or employees.<sup>51</sup> When, as here, two  
5 organizations have no common officers or employees, this factor weighs against affiliation.<sup>52</sup>

6           (F)     *Former Officers or Employees*

7           This factor concerns whether a sponsoring organization has any members, officers, or  
8 employees who previously were members, officers, or employees of the other sponsoring  
9 organization, indicating a formal or ongoing relationship or the creation of a successor entity.<sup>53</sup>  
10 Here, “none of IHG’s officers and to its knowledge none of its employees are former BCBSA  
11 employees.”<sup>54</sup> The Commission previously found in Advisory Opinion 2014-11 (HCSC), that  
12 even when one BCBSA licensee had a “limited” number of former BCBSA employees,  
13 including one serving in a senior leadership position, that small number of former BCBSA  
14 employees did not suggest a “formal or ongoing relationship” within the meaning of section  
15 100.5(g)(4)(ii)(F) and 110.3(a)(3)(ii)(F).<sup>55</sup> Given that IHG has no known employees that  
16 formerly worked for BCBSA, this factor also weighs against finding affiliation.

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<sup>50</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E).

<sup>51</sup> See AOR010.

<sup>52</sup> See Advisory Opinion 2023-02 (Humana) at 7; Advisory Opinion 2014-11 (HCSC) at 6.

<sup>53</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F).

<sup>54</sup> See AOR010.

<sup>55</sup> See Advisory Opinion 2014-11 (HCSC) at 6.

1           (G)     *Providing Funds or Goods*

2           Under this factor the Commission considers whether a sponsoring organization provides  
3 funds or goods in a significant amount or an ongoing basis to the other sponsoring organization  
4 or committee.<sup>56</sup> Here, BCBSA provides IHG the exclusive rights to market and sell products  
5 under the Blue Cross name and marks in southeastern Pennsylvania.<sup>57</sup> Additionally, BCBSA  
6 provides administrative services to IHG for the healthcare benefits it offers to federal employees,  
7 retirees, and their dependents pursuant to a BCBSA contract with the Office of Personnel  
8 Management.<sup>58</sup> In exchange for these goods, IHG provides funds to BCBSA in the form of  
9 licensing and membership fees and, further, must use the Blue Cross name and marks to generate  
10 at least 80% of its local revenue attributable to health care plans and related services offered  
11 within southeastern Pennsylvania.<sup>59</sup> The Commission previously has examined a similar  
12 arrangement between BCBSA and another one of its licensees and concluded that their  
13 respective provision of funds and goods weighs in favor of finding the entities to be affiliated;<sup>60</sup>  
14 the same conclusion applies here.

15           (H)     *Arranging for the Provision of Funds or Goods*

16           This next factor concerns whether a sponsoring organization causes or arranges for funds  
17 or goods to be provided to the other sponsoring organization in a significant amount or on an

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<sup>56</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(G), 110.13(a)(3)(ii)(G).

<sup>57</sup> See AOR011.

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See Advisory Opinion 2014-11 (HCSC) at 6.

1 ongoing basis.<sup>61</sup> BCBSA offers IHG (and other membership plans) voluntary contractual  
2 agreements with some vendors, such as AT&T, Xerox, and Hertz.<sup>62</sup> IHG describes these  
3 services as “insubstantial.”<sup>63</sup> The Commission previously concluded that BCBSA’s provision of  
4 similar voluntary and “insubstantial” contractual arrangements — in that case, with nationwide  
5 airlines and telecommunications companies — do not weigh in favor of finding the entities’  
6 SSFs to be affiliated.<sup>64</sup> That conclusion applies equally here.

7 *(I) Formation*

8 This factor involves whether a sponsoring organization or committee or its agent had an  
9 active or significant role in the formation of the other sponsoring organization.<sup>65</sup> BCBSA did not  
10 create IHG.<sup>66</sup> In fact, IHG’s predecessor, IBC, was formed in 1938—44 years before BCBSA  
11 was formed in 1982.<sup>67</sup> Likewise, IHG played no role in forming BCBSA.<sup>68</sup> These facts weigh  
12 against finding that IHG and BCBSA, and their respective SSFs, are affiliated.<sup>69</sup>

13 *(J) Contribution Patterns*

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<sup>61</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(H), 110.3(a)(3)(ii)(H).

<sup>62</sup> See AOR011.

<sup>63</sup> See *id.*

<sup>64</sup> See Advisory Opinion 2014-11 (HCSC) at 6-7.

<sup>65</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I).

<sup>66</sup> See AOR011.

<sup>67</sup> See *id.*

<sup>68</sup> See *id.*

<sup>69</sup> See Advisory Opinion 2014-11 (HCSC) at 7; Advisory Opinion 2014-21 (Cambia) at 7.

1           This factor pertains to whether the sponsoring organizations’ SSFs have similar patterns  
2 of contributions or contributors that would indicate a formal or ongoing relationship between the  
3 sponsoring organizations or committees.<sup>70</sup> Since 2019, the number of federal committees that  
4 received contributions from both IBC PAC and BluePAC has declined.<sup>71</sup> Between January 1,  
5 2019, and December 31, 2020, IBC PAC and BluePAC collectively contributed to 247 federal  
6 committees but only 31, or 12%, received contributions from both.<sup>72</sup> Then, from January 1,  
7 2021 through December 31, 2022, IBC PAC and BluePAC contributed to a total of 221 federal  
8 committees but only 23, or 10.4%, received contributions from both.<sup>73</sup> And most recently,  
9 between January 1, 2023, and December 31, 2023, IBC PAC and BluePAC contributed to a total  
10 of 197 federal committees but only 15, or 7.6%, received contributions from both.<sup>74</sup> IHG asserts  
11 that “the overlap is most likely the result of both corporations’ interest in insurance and health  
12 care issues and does not indicate a formal or ongoing relationship between the committees.”<sup>75</sup>  
13 The Commission agrees that the decreasing, small percentage of overlapping contributions does

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<sup>70</sup> 11 C.F.R. §§ 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J).

<sup>71</sup> See AOR012. This decline follows a steady rise between January 1, 2015, and December 31, 2020. See *id.* Between January 1, 2015, and December 31, 2016, IBC PAC and BluePAC contributed to a total of 293 federal committees, but only 14, or 4.8%, received contributions from both. See *id.* Then, from January 1, 2017, through December 31, 2018, IBC PAC and BluePAC again contributed to a total of 293 federal committees, and 27, or 9.2%, received contributions from both. See *id.* And between January 1, 2019, and December 31, 2020, IBC PAC and BluePAC contributed to a total of 247 federal committees, and 31, or 12.6%, received contributions from both. See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> See *id.*

<sup>74</sup> See *id.*

<sup>75</sup> See *id.*

1 not suggest a formal or ongoing relationship between IHG and BCBSA, and, thus, this factor  
2 weighs against finding affiliation.

3 *Context of the Overall Relationship between the Entities*

4 In considering the foregoing circumstantial factors, the Commission examines the  
5 “context of the overall relationship” between the entities to determine whether they are properly  
6 considered affiliated.<sup>76</sup> In the context of BCBSA licensees, the Commission previously has  
7 observed that relationship features signaling disaffiliation include when the licensee is not  
8 required to conduct its insurance and related businesses exclusively under the BCBSA mark,  
9 when the licensee has become well-diversified beyond the health insurance products it markets  
10 under the licensing agreements with BCBSA, and when the licensee’s non-Blue business  
11 competes with BCBSA.<sup>77</sup>

12 Here, IHG’s businesses are “well diversified, offering a wide range of healthcare  
13 products and services.”<sup>78</sup> “Its subsidiaries include, but are not limited to, licensed health  
14 insurance companies, health maintenance organizations, and third-party administrators, which  
15 offer and/or administer a variety of health benefit plans and services.”<sup>79</sup> For instance, its largest  
16 subsidiary, AmeriHealth Caritas, offers managed Medicaid plans, special needs programs, long-  
17 term care services and support, and consumer exchange plans.<sup>80</sup> IHG also owns non-health

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<sup>76</sup> See 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii).

<sup>77</sup> See Advisory Opinion 2014-11 (HCSC) at 7-8 (citing Advisory Opinion 1999-39 (WellPAC) at 4, 7).

<sup>78</sup> See AOR013.

<sup>79</sup> See AOR002.

<sup>80</sup> See AOR013.

1 insurance subsidiaries.<sup>81</sup> For example, its wholly owned subsidiary, AmeriHealth  
2 Administrators, Inc., provides third-party administration and related services.<sup>82</sup> And its  
3 majority-owned subsidiary, Tandigm Health LLC, provides population-health services to  
4 physicians and healthcare systems.<sup>83</sup>

5         Additionally, IHG’s non-Blue business is geographically diverse, extending far beyond  
6 the five counties in southeastern Pennsylvania where it conducts its Blue business, into nearly all  
7 50 states, the District of Columbia, and tribal territory.<sup>84</sup>

8         Moreover, IHG has non-Blue business that competes against Blue business.<sup>85</sup> In  
9 particular, AmeriHealth Caritas and its subsidiaries compete against Blue plans in seven of the  
10 nine states in which they operate and the District of Columbia.<sup>86</sup> Additionally, two IHG  
11 subsidiaries that provide health insurance products in New Jersey (the AmeriHealth Insurance  
12 Company of New Jersey and AmeriHealth HMO, Inc.) compete against a Blue plan in the  
13 individual Affordable Care Act market and in the employer group market.<sup>87</sup>

14         Further, in 2022, IHG’s non-Blue business generated \$13.1 billion in revenue, amounting  
15 to 48% of its total revenue.<sup>88</sup> That same year IHG had 5.6 million non-Blue members,

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81         *See id.*

82         *See id.*

83         *See id.*

84         *See id.*

85         *See id.*

86         *See id.*

87         *See AOR013-14*

88         *See AOR013.*



1 accounting for 67% of its total membership.<sup>89</sup> Still, “IHG’s Blue business remains an important  
2 part of its business model.”<sup>90</sup> Indeed, a majority of IHG’s revenue (52%) still comes from its use  
3 of the BCBSA name and marks.<sup>91</sup> Nevertheless, the Commission previously has determined that  
4 negotiated business arrangements between two entities do not by themselves necessarily rise to  
5 the level of affiliation.<sup>92</sup> The Commission made this observation, for example, in Advisory  
6 Opinion 2014-11 (HCSC), in which the SSF of a BCBSA licensee, Health Care Service  
7 Corporation (“HCSC”) asked the Commission to find that it was no longer affiliated with  
8 BCBSA’s SSF.<sup>93</sup> The Commission made that finding even though HCSC’s “overall operations  
9 remain[ed] heavily tied to its use of the BCBSA marks for the sale of health insurance products,”  
10 because its “ongoing relationship with and obligations to BCBSA under the Agreements [we]re  
11 outweighed by the absence of facts that support a finding of affiliation” under all but one of the  
12 enumerated factors (factor (G): providing funds or goods).<sup>94</sup> Likewise, although IHG’s overall  
13 business is still strongly tied to its Blue business, just one of the enumerated factors — also  
14 factor (G) — supports that IHG and BCBSA, and their respective SSFs, are affiliated.

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<sup>89</sup> *See id.*

<sup>90</sup> *See* AOR012.

<sup>91</sup> *See* AOR013.

<sup>92</sup> *See* Advisory Opinion 2014-11 (HCSC) at 8; Advisory Opinion 2014-21 (Cambia) at 8.

<sup>93</sup> *See* Advisory Opinion 2014-11 (HCSC) at 1, 8.

<sup>94</sup> *See id.* at 8; *see also* Advisory Opinion 2014-21 (Cambia) at 2, 8 (finding BCBSA SSF and one of its licensee’s SSF no longer affiliated, despite that “[n]ationwide, at least two-thirds of [licensee’s] revenue associated with health care plans must be derived from Blue Cross products,” because its “ongoing relationship with and obligations to Blue Cross under the licensing agreements are outweighed by the absence of facts that support” finding affiliation in all but one of the enumerated factors).

