CENTENE Corporation

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 regulations.gov

RE: Definition of "Employer" Under Section 3(5) of ERISA – Association Health Plans (RIN 1210-AB85) and Centene Corporation's Comments

Dear Assistant Secretary Rutledge:

Please accept this comment letter as Centene Corporation's (CNC) response to the Department of Labor's (the Department) Notice of Proposed Rulemaking (NPRM) titled Definition of "Employer" Under Section 3(5) of ERISA-Association Health Plans (83 FR 614).

Generally, we are concerned with numerous provisions of the NPRM and the impact it will have on the individual health insurance market, potential negative impact to the risk pool, market contraction and related consumer experience. While Centene supports the Department's objectives of expanding insurance access and lowering consumer cost options, we believe that the NPRM would instead impose a negative impact to these objectives.

We respectfully urge the Department to consider retaining the existing regulations and/or sub-regulatory guidance that is currently governing the commercial market, in an effort to protect consumers in varying market segments – individual, small group and large group. The Department's final rulemaking should also clearly protect the role of state governments and their ability to regulate health insurance in the market, including but not limited to, honoring the statutory definition of "employer" and establishing guardrails to protect consumers who purchase commercial products.

For your consideration, please find a summary of Centene's concerns and/or our recommendations for final rulemaking below:

- **Definition of Employer**. We strongly recommend that the final rule maintain the *existing* definition of "employer", allowing only an owner or owners with common law employees, the ability to participate in an Association eligible to enroll in a health plan. Working owners

who do not have employees should not be included in the definition of employer (this equates to sole proprietors). It is our belief that this modification in the NPRM will create confusion and subsequently impose negative impacts on existing commercial markets. We recommend rather that the Department develop strict eligibility criteria for establishing status as a working owner. Per verification concerns, we also recommend that the Department establish recurring reporting requirements to ensure the legitimacy of an Association Health Plan employer.

- We have concerns that the proposed definition of **"eligible participants"** (those who are eligible to form and/or participate in an Association Health Plan) is vague and lacks a rational relationship to employment and/or common interests, which raises a risk for abuse. We therefore recommend that the definition of eligible participants only include currently active employees; the final rules should clearly specify that eligibility should not be extended to former employees and/or family members.

- As written, the **"commonality of interest"** test is broad and should be specifically limited to allowing only closely related industries and businesses that have an actual employment relationship to one another to form and/or be eligible for an Association Health Plan. As a recommendation, we respectfully urge the Department to remove the inclusion of "common metropolitan areas" as a means to establish commonality of interest and further limit geographical commonality to single states.

- We recommend that **bona fide association standards** should be maintained, and associations should not be eligible to establish health plans solely for the purpose of obtaining health coverage. Groups or associations should have a common employment interest separate from health benefits and be required to have been in existence for at least five (5) years prior to forming an Association Health Plan. Alternatively, there are several restrictions on associations, including background checks, state registration, and limits on broker compensation, that can help reduce the risk of bad actors. We therefore respectfully urge the Department to maintain the existing "bona fide association" requirements that are currently enforce.

- **State Authority:** We recommend that the authority of states to oversee Association Health Plans and/or Multiple Employer Welfare Arrangements should not be limited by this rule. The final rule should very clearly illustrate this position. We believe it is imperative for States to maintain their oversight authority to ensure solvency and consumer protection against fraudulent activities.

- **Consistency in market rules**. All health plans competing in a state market should be subject to the same rules. In an effort to avoid and/ or reduce churning between markets, we recommend that that the Department considers limiting the Association's enrollment periods and impose a ruling that would "lock-in" an Association into their health plan for a period of no less than 12-months.

- **Non-discrimination protections.** While the NPRM references the continuation of the Non-discrimination rules applying to the expanded definition of employer (including Association Health Plans), we recommend that the final rule include stricter language to enforce prohibitions on discrimination - specifically based on health factors as well as premium variations or membership determinations based on health factor. Without clearly specifying this, the rule might as is might be interpreted to allow an Association to rate a small business that is expected to have higher risk substantially higher than more favorable business or groups. The association could also increase rates of a specific group after experiencing expensive claims costs, which could end in forcing the group to drop out of the Association. We recommend that the final rule distinctly clarify what employment-related factors would be permissible and which would be prohibitive. The final rule should apply the non-discrimination rules to both the Association and its employer groups.

- **Ruling and Regulatory Guidance – Applicability.** We recommend that any guidance, including final rules, sub-regulatory guidance, and advisory opinions, that the Department intends the final rule to supersede should be explicitly listed in a final rule to ensure market understanding.

- R**egulatory effective date.** The final rule should allow for sufficient time understand and implement the new rules and for states to ensure laws and systems are in place for additional Association Health Plan enrollees. Therefore, we recommend the effective date should be no sooner than January 1, 2020.

We appreciate the opportunity to comment on this proposed rule and thank you for your consideration of our comments. If you have questions, please contact me at jdinesman@centene.com or 314.505.6739.

Sincerely,

Jonathan Dinesman
Senior Vice President, Government Relations
Centene Corporation