



Date: August 7, 2023

To: comments@pcaobus.org

Subject: Comment Letter re PCAOB Rulemaking Docket Matter No. 051: Proposed Amendment to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations and Other Related Amendments

Dear Secretary Brown and Members of the PCAOB:

This letter represents the views of Elevance Health, Inc. management ("Elevance Health"), listed No. 22 on the Fortune 500, regarding PCAOB Release No. 2023-003 regarding a Proposed Amendment to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations ("NOCLAR") and Other Related Amendments (the "NOCLAR Proposal").

We appreciate the opportunity to provide feedback to the Board regarding the proposed NOCLAR standard. Further, we appreciate the PCAOB's responsibility and ongoing efforts to modernize auditing standards. However, as regards the NOCLAR Proposal, we believe the proposed changes go too far in expanding the scope of the audit to indirect effects that NOCLAR might have on the financial statements. Our objections include:

1. Audit Expansion: As proposed, the amendments would require our auditors to identify the "laws and regulations with which noncompliance could reasonably have a material effect on the financial statements." To do this, in order to evaluate whether any NOCLAR has occurred and to test the accuracy and completeness of Elevance Health's own compliance function, we believe that the auditors would have to separately identify and compile all of the laws and regulations to which Elevance Health is subject. As with any company, this would include federal, state and local laws and regulations around corporate licensing and registration, federal/state/local taxation, labor (pay, employee benefits, etc.), consumer protection laws, as well as laws and regulations around workplace safety and facilities. Where applicable, international laws and regulations, potentially of multiple countries, would apply as well.

Moreover, Elevance Health's businesses include:

- a. Health insurance plan operations in all 50 states and Puerto Rico, including Medicare and Medicaid,
- b. Pharmacy services including pharmacy benefit management and specialty pharmacy services,
- c. Healthcare services, including integrated care delivery, behavioral health, palliative care, utilization management, payment integrity and subrogation services, as well as health and wellness programs, certain of which are supported by affiliates organized outside of the United States,
- d. Over 100,000 associates located in every state in the United States, Puerto Rico, and several international countries.

These businesses are subject to a multi-layered network of laws and regulations which vary across jurisdictions, including but not limited to:

- Federal (Center for Medicare & Medicaid Services),
- State (health, insurance and consumer protection laws and regulations)
- Local (individual county and/or city regulations) level, and

- Both U.S. and non-U.S. based laws and regulations that govern our international subsidiaries (Foreign Corrupt Practices Act and foreign laws and regulations).

Given the breadth and depth of our regulatory environment, a requirement for the auditors to identify all the laws and regulations to which Elevance Health is subject, and then identify and assess all instances of non-compliance as to whether they “could reasonably have a material effect on the financial statements” is not practical or feasible.

2. Scope Expansion: Under current financial statement audit standards, and audits of internal controls over financial reporting, the auditor is not required to detect every financial statement misstatement, nor every instance of noncompliance with internal controls. Rather, the focus of current standards is for the auditor to obtain “reasonable” assurance. The current standard AS 2405, *Illegal Acts by Clients*, similarly requires that audit procedures should focus on those illegal acts “that would have a direct and material effect on the determination of financial statement amounts”. To require auditors to develop procedures that go even further and identify and evaluate all instances of NOCLAR – even indirect effects – would significantly increase the already high cost of operating as a public company.

During current Elevance Health audits, the auditors already have procedures in place to gain an understanding of our policies, procedures, and internal controls for identifying, evaluating and accounting for litigation, claims and assessments, as well as inquiries concerning our compliance with laws and regulations, and knowledge of violations or possible violations of laws and regulations. The auditors obtain documentation and test our accuracy and completeness of litigation, claims and assessments related to NOCLAR. Moreover, Elevance Health has several subsidiaries that require separate, individually audited financial statements. Through these audits, the auditors gain more in-depth information about compliance with laws and regulations. In light of this, the cost and burden of the proposed amendments would greatly outweigh any benefit.

3. Auditor Competencies: The vast majority of auditors are not trained in the law; auditors at most have some education in general business law. Even with experience and industry knowledge gained over the years in performing audits of health insurance companies, audit firms do not have the expertise or staffing to identify all of the potential laws and regulations with which Elevance Health is required to comply. As such, to meet the proposed auditing standards, auditors would be required to engage attorneys and specialized regulatory compliance experts who, conversely, do not have the requisite training to perform audits. This would significantly increase the cost and time it takes to complete the audit, and public companies such as Elevance Health would suffer, with (1) less competition in the marketplace as many audit firms would likely be unable to meet the proposed standards, and (2) audit firms unable to meet client needs and SEC timelines, as they would likely be unable to keep their current engagement volume.
4. Duplication: Elevance Health already has in place a large and comprehensive compliance function that works together to identify NOCLAR and evaluate the potential financial statement effects. This includes an in-house Legal team under the direction of a Chief Legal Officer, which includes nine centers of expertise to support compliance with laws and regulations across all our businesses. Elevance Health also has an Ethics Department, Privacy Department, Medicaid and Medicare Compliance departments, Internal Controls Department, Records and Information Management Compliance team, and various other compliance resources throughout our health insurance, pharmacy services and healthcare services businesses, all under the direction of a Chief Compliance Officer and/or a Chief Audit Executive. The Compliance and Audit functions are also addressed regularly by the senior leadership team, the audit committee and the board of directors. We believe the NOCLAR Proposal would result in unnecessary and costly duplicative work by the auditors. Moreover, our Compliance resources would become burdened by additional time and resources dedicated to financial statement audit support, which would potentially affect the efficiency and effectiveness of actual compliance activities themselves. Elevance Health is already subject to operational compliance audits, as well as Market Conduct Examinations, at the federal and state level, the results of which are available to the independent financial statement auditors already. Additional work assessing NOCLAR done in support of the financial statement audit is not needed.

In summary, we believe that the cost, time, and administrative burden of the Proposed Amendment far outweigh and potential benefit to investors, and it should be rejected.

We appreciate the opportunity to provide feedback on PCAOB Release 2023-003: Auditing Standards related to a Company's Noncompliance with Laws and Regulations.

Sincerely,

Ronald Penczek
Chief Accounting Officer
Elevance Health, Inc.