



March 6, 2018

Attention: RIN 1210-AB85

Secretary R. Alexander Acosta
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted via <https://www.regulations.gov/>

RE: RIN 1210-AB85 - Definition of “Employer” Under Section 3(5) of ERISA-Association Health Plans

Dear Secretary Acosta:

On behalf of the American Veterinary Medical Association (AVMA) and our member-veterinarians, thank you for the opportunity to comment on this proposed rule regarding association health plans (“AHPs”). AVMA is the nation’s leading representative of the veterinary profession. We speak for more than 91,000 member-veterinarians across the United States who care passionately about protecting animal health, animal welfare and human health. Informed by our members’ unique scientific training and knowledge, we advocate for policies that advance the practice of veterinary medicine and support the crucial work of veterinarians nationwide.

In 1956, the AVMA established the AVMA Group Health and Life Insurance Trust (now known as AVMA Life, referred to hereafter as the “Trust”) as a vehicle to offer health, life and disability income insurance to individual AVMA member-veterinarians of the association on a group basis. The Trust operated as a professional, bona fide association plan, offering health insurance coverage to member-veterinarians of the AVMA through 2013. The Trust continues to provide disability income and life insurance to AVMA members.

For nearly 60 years the AVMA, through the Trust, provided medical insurance plans to member-veterinarians, who largely operate as small businesses. Member-veterinarians and their dependents relied on the Trust’s coverage, which was uniquely tailored to their needs because plans were developed *by* veterinarians, *for* veterinarians. Put simply: the medical plans were developed and overseen by fellow veterinarians who had their colleagues best interest at heart. Our focus is on providing the maximum value to our member-veterinarians, not maximizing profits. Unfortunately, due to statutory and regulatory changes resulting from the Patient Protection and Affordable Care Act (ACA), AVMA was forced to end coverage in 2013. This

was an incredibly difficult situation to be in, as it forced our members to lose their healthcare coverage overnight. Those participating in the plan were forced to seek coverage, often less desirable, from other insurance plans or the insurance exchanges; some individuals even chose to go without coverage completely.

The Trust provided health insurance to nearly 36,000 individuals, including AVMA members and their families, as well as retirees, by paying premiums collected from members to an insurance company for a group health insurance policy. The premiums charged for health insurance coverage were established with the assistance of the Trust's actuaries and through negotiations of the Trustees and the insurance company. The program was considered large group coverage for insurance law purposes.

Coverage also included, before ACA was adopted, multiple benefit provisions now required by the ACA, including: preventive benefits, maternity coverage, portability, and coverage for dependent children up to age 26. Insurance was offered on a guaranteed issue basis and was guaranteed to be renewed without regard to the health condition of the member-veterinarian or their dependents; members were not denied coverage because of any previous health condition. The Trust offered nine different medical plan designs, including indemnity, PPO and HSAs, with annual deductibles ranging from \$1,000 to \$5,000 and coinsurance levels at either 80/20 or 60/40, intended to cater to our members' unique needs. Generally speaking, these plans provided richer benefits than many ACA exchange options and at reasonable cost.

The plans were overseen by a nine-member Board of Trustees, all of whom are veterinarians and AVMA members. The Trustees serve four-year terms on a volunteer basis and were intimately involved in the Trust's business. They are responsible for establishing strategic policies, adopting operating procedures, and selecting service providers to support the Trust's programs. Their duties include: designing and selecting benefit plans to be offered to the membership; participating in the communications regarding available coverage; actively reviewing and improving customer service provided to members; monitoring claim levels and negotiating the premiums charged by the underwriting insurer; and acting as the final level of member appeal.

The AVMA appreciates the Trump Administration's commitment to provide more coverage options for the American people. Prior ACA guidance indicated that association health plans could not be offered as collective large group coverage, which for a variety of reasons, made the Trust's prior program unfeasible. The Department of Labor's proposed rule attempts to undo the negative results of this prior guidance. Unfortunately, however, it appears that AVMA would not be able to offer an AHP under the current proposed framework due to the requirement that "**member employers**" control the AHPs function and activities, and because the rule does not address membership associations offering health plans.

It appears that AVMA's Trust model would satisfy all other requirements set forth in the rule to be considered an association eligible to provide an AHP program. However, as illustrated above through the description of the Trust and its Board of Trustees, AVMA *individual members* serve in leadership positions in their individual capacity, rather than as representatives of employers. In this way, the Trust is controlled by member individuals rather than employer members. Therefore, the AVMA appears unable to participate in an AHP as the rule is currently

constructed.

In light of this concern, and in line with the administration's goal of expanding access to coverage, AVMA recommends that the Department consider adding a process through which the Secretary can review an association and deem it eligible to offer an AHP. This process would still allow for appropriate review and scrutiny regarding an organization's eligibility, but also provide an avenue for membership associations, such as AVMA, to participate. Additionally, this approach would allow AVMA to further expand coverage by being able to offer coverage to members who have retired or are unemployed, since the coverage relationship would be contingent on membership, not employment.

AVMA recommends the Department amend the definition of "bona fide group or association" in the proposal so as not to limit the definition to those organizations who only have employers as members. The proposed regulation should allow employee-members of the organization to join of their own accord, regardless of employment formalities.

Thank you again for the opportunity to provide comments. The AVMA welcomes the opportunity to discuss these recommendations in more detail. If you have any questions or would like to discuss further, please contact Alex Sands, Assistant Director, AVMA Government Relations Division, at (202) 789-0007. We look forward to working with you as we explore available avenues to allow us to resume providing health insurance to our members.

Sincerely,

A handwritten signature in black ink that reads "Janet D. Donlin DVM". The signature is written in a cursive style.

Janet D. Donlin, DVM, CAE
Executive Vice President and Chief Executive Officer
American Veterinary Medical Association

A handwritten signature in black ink that reads "Michael J. Topper". The signature is written in a cursive style.

Michael J. Topper, DVM, PhD, DACVP
President
American Veterinary Medical Association