

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



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87-05A

Sec. 3(1), 3(5), 3(7), 3(6), 3(8)

Mr. William E. Dickenson
Vice President, Personnel
Vantage Healthcare Corporation
530 Main Street
Evansville, Indiana 47708

Dear Mr. Dickenson:

This is in reply to your request for an advisory opinion addressing whether the Vantage Healthcare Employee Benefit Plan (the Plan) is an employee welfare benefit plan covered by title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Your correspondence and the accompanying Plan Document contain the following facts and representations. Vantage Healthcare Corporation (Vantage) is an Indiana Corporation with corporate offices in Evansville, Indiana. Vantage is in the business of owning, managing, leasing, and operating nursing homes with facilities based in a number of various locations in the United States. On December 1, 1983, Vantage established the Plan for the specific purpose of providing certain employee welfare benefits for its eligible employees and their dependents. In general, the Plan provides medical and surgical benefits in the event of accident or sickness, hospital and out-patient care, and dental benefits (Plan Document Arts. VII - XI).

For purposes of eligibility to receive benefits under the Plan, the Plan Document defines "eligible persons" as "all active full time employees who have satisfied the eligibility period and work not less than the number of hours required on the Schedule of Benefits" (Plan Document Art. II, Sec. 2.5.). You represent that there are no participants in the Plan other than the eligible employees of Vantage and their dependents.

You represent that Vantage makes contributions to the Plan for each participant, except for dependent coverage, for which the employee may contribute up to 100 percent of the contributions needed for that purpose. The employer/employee contribution percentages may vary from facility to facility, depending upon union contract arrangements, area practice, past practice of the facility, and similar considerations.

Pursuant to ERISA section 4, in pertinent part, title I of ERISA applies to any employee benefit plan if it is established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce except those plans exempt under section 4(b). Some plans covered by title I of ERISA are exempted from certain parts thereof. The term "employee benefit plan," as defined in section 3(3) of title I of ERISA, includes employee welfare benefit plans.

ERISA section 3(1) provides that the term "employee welfare benefit plan" includes:

... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

Health and dental benefits of the type provided by the Plan are included in ERISA section 3(1).

The term "employer" is defined in ERISA section 3(5) as "... any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity."

Vantage meets this definition with respect to the Plan for the purpose of providing benefits for its employees.

The term "participant" is defined in section 3(7) of ERISA title I, in pertinent part, as "... any employee or former employee of an employer, ... who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer ..., or whose beneficiaries may be eligible to receive any such benefit." The employees of Vantage are participants under the Plan.

The term "employee" is defined in section 3(6) of ERISA title I as "... any individual employed by an employer." Because Vantage meets the definition of "employer" in ERISA section 3(5) with respect to the Plan, the individuals employed by Vantage meet the definition of "employee" in ERISA section 3(6).

The term "beneficiary" is defined in section 3(8) of ERISA title I as "... a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a

benefit thereunder.” Persons designated by Plan participants or by the terms of the Plan meet the requirements of the term "beneficiary" as defined by section 3(8) of ERISA.

Because the Plan was established and is maintained by Vantage, an employer within the meaning of section 3(5) of ERISA, to provide health and dental benefits for Plan participants (eligible Vantage employees) and their beneficiaries, it is the view of the Department that the Plan constitutes an employee welfare benefit plan as defined in ERISA section 3(1). As noted above, section 3(1) of ERISA defines the term "employee welfare benefit plan" without regard to whether benefits are provided through insurance or otherwise. Accordingly, the Plan, unless otherwise exempt, is subject to the provisions of title I of ERISA.

With respect to whether the Plan is a multiple employer welfare arrangement within the meaning of section 3(40) of ERISA, section 3(40) of ERISA defines the term "multiple employer welfare arrangement" (MEWA) to mean, as here relevant, an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in section 3(1) of ERISA to the employees of two or more employers. Since you represent that only employees of Vantage Healthcare Corporation participate in the Plan, it does not appear that the Vantage Healthcare Employee Benefit Plan is a MEWA.

This opinion addresses only the question of whether the Plan is subject of title I of ERISA. It does not address any other issues under ERISA, including, but not limited to, the requirement of section 403(a) of ERISA that plan assets be held in trust.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Associate Director for Regulations and Interpretations