

SPECIAL
BROKER REPORT



What to Do About COBRA When a Client Goes Out of Business

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Imagine for one moment ... you're sitting at your desk on Friday afternoon, knocking a few last items off your to-do list before escaping for the weekend. Suddenly, the phone rings. It's a client you've been serving for years, but this time, he isn't calling to talk about a claim gone wrong or an irritating carrier. This time, the client tells you he's closing his doors – for good.

As this client's insurance broker, what do you do?

- a. Nothing – it's his business and his problem.
- b. Ask for key dates so you can make insurance and COBRA decisions.
- c. Tell the COBRA administrator to send out COBRA offer letters ASAP so the company complies with its 60-day notice period.

If you answered “b,” you are correct. However, those of you who answered “c” might be intrigued to know why your answer was wrong. But before I answer that question, let me ask you something else.

Will the employees of this company be eligible for federal COBRA?

- a. Yes. Their jobs will be terminated, which is a qualifying event, so they are eligible for 18 months of COBRA.
- b. No. If a company closes its doors, the health plan ceases to exist. If the health plan ceases to exist, no COBRA is available to the laid off workers.
- c. Yes, but COBRA is only available through the date that the health plan is paid. The time period might be much shorter than 18 months.

In this case, there are two correct answers: “b” and “c.” Are you shocked? Many people are. We all assume that dislocated workers will have COBRA. Not true. COBRA only exists if the health plan exists. So, the length of COBRA availability depends entirely upon the business’ timeline and approach to ceasing operations.

If a company is restructuring or filing bankruptcy, the health plan may stay intact for some time, and COBRA may be available for that period. However, if the business is really closing its doors with no wind-down process, the health plan often ends immediately. COBRA is only available through the date the health plan premium is paid. If the company failed to pay its carrier bill in the months leading to the shutdown, the COBRA date dies along with the plan retroactively.

So, back to the first question ... In this scenario, why shouldn’t the COBRA administrator send out COBRA offer notices immediately?

For two reasons:

1. COBRA may not be available at all.
2. If COBRA is available, you need to know how long the plan will continue before sending an offer letter so the newly unemployed understand exactly what their continuation rights are (or are not).

In fact, instead of just an offer letter, it may be more appropriate to send a COBRA election notice indicating the time involved with the end of the plan and a notice of unavailability, letting laid-off workers know that they will not have access to COBRA when the plan ends.

So, if a client ever tells you that he or she is planning a huge layoff, bankruptcy, or restructure, or just closing the doors forever, here’s your “stop, drop, and roll” formula for COBRA:

1. Let the employer know that closing decisions and timelines will have a huge impact on the dislocated employees' access to COBRA.
2. Don't mail anything until you have a clear picture of the situation.
3. Ask for detailed information about the company closure. The employer may try to be vague but do your best to get all the facts.
 - Will everyone be laid off at once or will it be a gradual process?
 - For how long will the health plan be maintained?
 - Is it a restructure or a bankruptcy?
4. Call the carrier to confirm the health plan's paid through date.
5. Arrange a meeting or conference call between the employer, any legal counsel, the COBRA administrator, and the carrier to reach agreement about the proper notification process. If the closure involves a bankruptcy or formal restructure, and depending on the company's size, there could be special notice requirements and a bankruptcy judge involved. The company's legal counsel should advise on this matter.
6. When the facts are clear, the COBRA administrator should promptly send impacted workers and COBRA participants the appropriate notices.

These could include:

- A standard offer letter, notifying them of the appropriate COBRA timeline associated with their COBRA eligibility.
- An amended offer letter, notifying them of a shortened COBRA period of eligibility.
- A notice of unavailability letter, notifying them that they have no access to COBRA either due to the end of the plan now or at a future date.

Keep in mind that workers are continuously making health care decisions and sometimes even scheduling surgical procedures well into the future, based on the current information they have. Prompt, clear communication minimizes the likelihood of confusing disputes later on.

As an insurance advisor, you hope to rarely encounter this situation. But when you do, you'll stand out as a true professional if you can provide invaluable advice to clients during one of their most stressful times. Moreover, giving sound advice is the right thing to do, and it could make a huge difference in the lives of all the people about to be impacted.

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