

Update

May 20, 2009



Steps for ending a health plan or health benefit option

Faced with shrinking workforces, business shutdowns, cash-flow problems or other challenges, some employers are considering trimming health and welfare benefit options or terminating a plan altogether. This *Update* provides a checklist of some steps to take when discontinuing a health plan or benefit option for active employees. The checklist focuses on common compliance activities but does not cover every situation that could arise. Employers should consider other restrictions that may apply, such as benefit provisions under collective bargaining agreements or employment contracts, and consult with legal counsel before taking action.

- ❑ **Review plan provisions and other written plan materials.**
 - Before making any decision to terminate a plan or its options, confirm that all plan documents, summary plan descriptions (SPDs) and other written plan materials clearly communicate the employer's right to terminate the plan or modify its offerings.

- ❑ **Check termination procedures in plan documents, trust agreements, third-party contracts and related benefit materials.**
 - Follow the plan document's or trust agreement's termination procedures, such as receiving approval by the board of directors or, for plans funded by a trust, providing advance notice to and possibly obtaining approval from the trustees.
 - Terminate any vendor or insurance contract that relates to the discontinued plan or benefit option, using the procedures set out in the contract. Relevant agreements may include contracts with third-party administrators, stop-loss carriers, insurers, pharmacy benefit managers and vendors for employee assistance programs.

- If employees pay for benefits on a pretax basis through a Section 125 cafeteria plan, review plan documents to determine if they need amendment to remove references to a terminated benefit.
- Document the change in a written plan amendment or other termination document. Plan amendments should be incorporated into or attached to the formal plan document. Retain copies of all termination materials with other records related to the plan, trust or contract.

□ **Prepare necessary disclosures and communications to individuals.**

- **Summary of material reductions (SMR).** When eliminating benefits under a group health plan subject to the Employee Retirement Income Security Act (ERISA), distribute an SMR to participants within 60 days of adopting the change. States may have their own notice requirements for plans exempt from ERISA. While ERISA doesn't require advance notice of health benefit reductions, employers should consider providing sufficient time to allow participants to secure other coverage.
- **Consolidated Omnibus Budget Reconciliation Act (COBRA) notices.** If terminating benefits in connection with a plant shutdown, layoff or reduction in an employee's hours, distribute timely notices of the right to continue coverage under COBRA. When carrying out involuntary terminations, make sure individuals eligible to pay reduced COBRA premiums through the temporary federal subsidy program receive updated notices with subsidy information. (For information on this program, see the March 6 [Update](#) and March 19 [Alert](#).) Unless loss of health coverage is caused by termination of employment or a reduction in work hours, employees losing coverage due to benefit termination or reduction generally aren't eligible for COBRA. However, COBRA qualified beneficiaries covered by a terminated plan should be notified and may have rights to continue COBRA coverage if you or an affiliated employer offer another group health plan.
- **Medicare Part D creditable coverage notices.** If termination of the plan or option will eliminate prescription drug coverage or change its Part D creditable coverage status, send the required [notice](#) to all individuals with employer prescription drug coverage who are eligible for Medicare Part D.

- **Health Insurance Portability and Accountability Act (HIPAA) creditable coverage certificates.** Under HIPAA, anyone losing group health coverage must receive a certificate of creditable coverage. Individuals with creditable coverage may have special rights to enroll in another health plan, so these certificates must meet certain content and delivery requirements. If a subsequent plan or insurer requests more information, the group health plan issuing a creditable coverage certificate must supply details about the classes and categories of coverage available, such as mental health services, substance abuse treatment, prescription drugs, dental care or vision services.
- **Conversion rights information.** When terminating insured group health policies, check state law to see if you must provide notices explaining conversion rights, which allow participants losing group coverage to purchase similar individual policies. In some states, however, conversion rights do not apply when a group policy is terminated.
- **Notices for administrative staff.** Distribute information about the termination to call center personnel, staff handling benefit claims or appeals, and others involved in plan or benefit administration.

□ **Prepare required government filings.**

- **ERISA plans.** If terminating an ERISA plan, file a final Form 5500 (and related schedules) with the Labor Department by the end of the seventh month after the plan year ends. Non-ERISA plans aren't required to make these filings.
- **Voluntary employees' beneficiary association (VEBA) trusts.** If discontinuing a plan funded through a VEBA trust that is terminating, file a final Form 990 with the Internal Revenue Service by the 15th day of the fifth month after the VEBA's termination. These VEBA filing rules apply regardless of the plan's ERISA status.
- **Multiple employer welfare arrangements.** If terminating a group health plan that files an annual [Form M-1](#), indicate on the Form M-1 for the calendar year in which the termination occurs that this form is the plan's final M-1 filing.
- **Prescription drug coverage.** If discontinuing prescription drug coverage, file an online [disclosure](#) with the Centers for Medicare and Medicaid Services within 30 days after termination of the coverage.



Editorial Board

Amy Bergner
amy.bergner@mercer.com

Christine Erb
christine.erb@mercer.com

Susan LeMaster
susan.lemaster@mercer.com

Kathleen Murray
kathleen.murray@mercer.com

Chad Nicholl
chad.nicholl@mercer.com

Wade Symons
wade.symons@mercer.com

Jennifer Wiseman
jennifer.wiseman@mercer.com

For more information

For additional information, please contact your Mercer consultant.

*This **Update** is for information only and does not constitute legal advice; consult with legal and tax advisers before applying this information to your situation.*

□ Consider the impact on plan administration.

- **Run-out claims.** When terminating a self-insured plan or benefit, set up a procedure for processing “run-out claims” – that is, claims incurred before but submitted after the termination. Participant notices explaining the plan or benefit termination should include information about claim filing deadlines.
- **Record retention.** For plans subject to ERISA, HIPAA, or the Family and Medical Leave Act, keep related plan records for the required number of years. If you took a federal tax deduction for employee benefits, offset payroll taxes for the temporary COBRA subsidy program or received Medicare prescription drug subsidies, you also will need to retain records substantiating the deduction, payroll offset or subsidy.

Authors

Tami Simon is a principal and attorney in Mercer’s Washington Resource Group. Tami specializes in health and welfare benefit plan design and compliance with federal laws and regulations, including COBRA, HIPAA, ERISA, USERRA and the Internal Revenue Code, along with state laws affecting benefit plans. Tami can be reached at tami.simon@mercer.com.

Trish Farrell is a principal and attorney in Mercer’s Princeton, NJ, office who specializes in health and benefits issues. Trish has more than 20 years of experience assisting clients with compliance issues affecting employee benefit plans. Trish can be reached at patricia.farrell@mercer.com.