



## Four Essential Factors to Consider in Outsourcing COBRA

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### Issue

COBRA administration is complex, and an increasing number of employers outsource this important task. What should they look for in a COBRA administrator?

### Solution

#### Background

The IRS succinctly stated the expectation of a COBRA program: to “operate in good faith compliance with a reasonable interpretation of the statutory requirements.”<sup>i</sup> The trouble is that the pile of statutory and other requirements is high: two statutes, two regulations, other legal guidance (e.g., Revenue Rulings and Notices) and more than two decades of court opinions. It is little wonder that COBRA outsourcing is a common decision.

Employers should take into account four essential criteria in seeking a COBRA third-party administrator (TPA):

- The TPA’s ability to provide a comprehensive, IRS and DOL compliant program
- The commitment to customer service
- The availability of technology to facilitate interactions between TPA and employer
- The TPA’s indemnification protection should something go wrong

Employers should use these criteria to look for potential hidden costs—service design issues that will erode the benefits of outsourcing.

#### A Comprehensive, Compliant Program

The IRS uses its COBRA Examination User’s Guidance assistance for plan audits, examining compliance based on four criteria found in a Senate Report related to a law called TAMRA.<sup>ii</sup> The “TAMRA criteria” are four factors that IRS considers in deciding whether to waive an excise penalty for COBRA mistakes. If an employer fails on even one factor, the IRS cannot waive the \$100 daily penalty. The TAMRA criteria are:

- **Training.** The best practice is to designate the person(s) responsible for COBRA and ensure they are fully and properly trained. Once trained, the employer should retain evidence of this fact.
- **Written Instructions.** An employer must have written procedures that are followed. The TPA should be able to provide these instructions if and when needed.
- **Design and Updates.** The COBRA program must be designed based on competent professional advice. The advice may include legal and actuarial resources.
- **Monitoring.** Independent auditors must monitor the program. They must be well versed in COBRA law. Employers handling COBRA in-house often miss this step.

#### Commitment to Customer Service

COBRA situations involve a mix of factors that can be highly emotional and stressful for both employers and qualified beneficiaries: a termination of employment, the high cost of COBRA premiums and a medical necessity or emergency. A TPA should have a well-trained call center that answers the phone promptly and resolves issues quickly and accurately. Promptly addressing issues with a sense of urgency can lower the risk of complaints to the DOL or of threatened legal action.



### **Availability of Technology**

Tasks that an employer will usually retain are qualifying event reporting and updating plans and rates. A TPA should provide a variety of means for providing this information (e.g., electronic file transfer, website, fax or paper). The electronic means should be fully secure and encrypted, if possible. In addition, a TPA should be able to provide a variety of activity reports, available through a secure website at any time.

### **Indemnification Protection**

Accidents happen. When a TPA accidentally makes a mess, you should count on the TPA to clean it up. Examine the indemnification verbiage in the service agreement to ensure that the TPA will take responsibility for its mistakes and will take appropriate corrective actions. Many TPAs insert a clause that limits liability to a low dollar amount or multiple of the monthly fees. A 2006 COBRA case showed how messy indemnification disputes between employer and TPA can be.<sup>iii</sup>

### **Explanation**

Infinisource, Inc. can satisfy the four essential criteria outlined above. First, we provide clients a complete COBRA service that includes full written procedures that are developed and monitored by competent professionals, including internal and external attorneys. We provide comprehensive training on the use of our service at account implementation, evidenced by a certificate, and certified training via our full-day seminars throughout the country. When clients are audited, we provide a "DOL Audit Kit," complete with all of the employer's COBRA-related information on two CDs, one each for the employer and the government official.

Second, regarding customer service, we have three separate call centers ready to answer calls 58 hours per week. We do not use an interactive voice response system, so every caller reaches a live voice. We respond to over 5,000 calls every week with typical average speed of answer of 30 seconds or less and first-call resolution over 90 percent.

Third, our COBRA administration is on our own proprietary platform called COBRA Enterprise®, an encrypted, web-based system that makes employer reporting a snap. In addition, numerous COBRA reports are housed there for easy, 24-7 access. Qualified beneficiaries can even review certain aspects of their COBRA coverage online.

Fourth, our service agreements contain a broad indemnification provision that protects clients against damages and penalties as a result of Infinisource mistakes. There is no limitation of liability, and the protection extends to HIPAA privacy-security breaches.

### **For More Information**

Infinisource can provide you with full-service COBRA administration. We started providing COBRA administrative services in the same year that COBRA was enacted, and we have generated over 3,000,000 COBRA notices since then. Our collective expertise is available to you at 800-300-3838 or [www.infinisource.net](http://www.infinisource.net).

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<sup>i</sup> 26 CFR§54.4980B-1, Q/A-2

<sup>ii</sup> Senate Report 100-445, Technical and Miscellaneous Revenue Act of 1988

<sup>iii</sup> *Linden v. Harding Tube Corp. and ADP*, 2005 WL 2397033 (E.D. Mich. 2005)