



# FALL

**WARNER**  
*Pacific*

# COMPLIANCE SPOTLIGHT

## DON'T FALL BEHIND ON COBRA RULES: ESPECIALLY IF YOUR CLIENTS ARE CHANGING PLANS THIS OPEN ENROLLMENT!

When an employer moves from a fully insured health plan to a level funded plan, their responsibilities regarding COBRA and state continuation requirements can change significantly due to the nature of level funded plans. Clients Changing Plans this Open Enrollment? Don't Fall Behind on COBRA Rules.



### UNDERSTANDING PLAN TYPES



#### **Fully Insured Plan:**

The insurance carrier assumes the risk and handles claims. These plans are subject to state insurance laws, including state continuation coverage.



#### **Level Funded Plan:**

Technically a self-funded plan, even though it mimics fully insured plans in structure. Employers pay a fixed monthly amount covering claims, admin costs, and stop-loss insurance. These plans are governed by federal law (ERISA) and not subject to most state insurance mandates.



### EMPLOYER RESPONSIBILITIES WITH LEVEL FUNDED PLANS

#### **1. Federal COBRA Compliance**

Required if the employer had 20 or more employees on more than 50% of typical business days in the previous calendar year.

##### **Employers must:**

- » Provide COBRA election notices.
- » Offer continuation coverage for up to 18/36 months.
- » Administer COBRA premiums and coverage.
- » This applies regardless of whether the plan is fully insured or level funded.

#### **2. State Continuation Laws**

Do not apply to level funded plans in most cases because these plans are self-funded and thus preempted by ERISA.

##### **This means:**

- » If an employer switches to a level funded plan, state continuation coverage (like "mini-COBRA" laws for small employers) are no longer applicable.
- » Small employers (fewer than 20 employees) who previously relied on state continuation laws are not be required to offer any continuation coverage unless they voluntarily choose to.



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## KEY CONSIDERATIONS

### 1. State Continuation Coverage Is Tied to the Fully Insured Plan

State continuation laws apply only to fully insured plans.

Once the employer switches to a level funded plan, which is considered self-funded, the new plan is not subject to state continuation mandates due to ERISA preemption.

### 2. Impact on the Employee Already on Continuation

The employee on state continuation may lose access to continuation coverage once the fully insured plan terminates.

The new level-funded plan is not required to offer continuation to that individual unless:

» **The employer voluntarily includes such provisions in the new plan.**

- There are several administrators who will administer this provision for a fee.
- Your level funded plan TPA or carrier may also be willing to administer this provision for a fee.
- The employee qualifies for federal COBRA and the employer is subject to COBRA (i.e., has 20+ employees).

### 3. COBRA Eligibility

If the employer is subject to federal COBRA, the employee might be eligible to continue coverage under COBRA if the qualifying event occurred while the employer was COBRA-covered.

However, if the employee was only eligible under state continuation (e.g., employer had fewer than 20 employees), and the employer switches to a level-funded plan, there may be no legal obligation to continue coverage under the new plan.



## EMPLOYER ACTION STEPS



**Notify the employee in advance of the plan change and its implications for their continuation coverage.**



**Consult legal counsel or a benefits advisor to determine if any transitional coverage or voluntary extension is appropriate.**



**Consider including a transition clause in the new plan document if you want to voluntarily extend coverage to those currently on state continuation.**

**Check out all of our compliance and legislative resources at [warnerpacific.com](http://warnerpacific.com).**