



Navigating the closing and selling of a medical practice

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PART TWO: Considering your current employee benefit plans

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If an employee benefit plan is not properly administered during this transition time when closing and selling your medical practice, there could be long-term financial consequences which survive the closing of your doors.

Most medical offices provide some sort of pension plan to its employees. There are two types of pension plans: defined benefit and defined contribution. A defined benefit plan is funded by the employer and promises the participants a specific monthly benefit at retirement. A defined contribution plan, on the other hand, does not promise a specific benefit amount at retirement. Instead the participants and, in some instances, the employer, contribute money to an individual account in the plan. A 401(k) plan is a popular type of defined contribution plan. Savings Incentive Match Plans for Employees (SIMPLE) IRAs, Simplified Employee Pensions (SEPs) and profit-sharing plan are other examples of defined contribution plans.

When any business is coming to an end, a decision must be made about the future of these plans. Although a plan should be established with the intention of being continued indefinitely, an employer may, generally, fully terminate its plan at its discretion. If you do not terminate your retirement plan after the closing of your business, you should be aware of the possibility of a "partial plan termination." The Internal Revenue Code and ERISA require full vesting of retirement plan benefits of each affected employee upon either (1) a termination or partial termination of a retirement plan, or (2) in the case of a profit sharing plan or a 401(k) plan, upon complete discontinuance of contributions under the plan.

Although you will generally know when you have consciously taken the steps to terminate a plan, whether a partial termination has occurred is not always clear because neither the Internal Revenue Code nor ERISA define a partial termination. In general, a partial termination is deemed to occur when an employer-initiated action results in a significant decrease in plan participation.

Courts have held that a partial termination may be deemed to occur when an employer reduces its workforce (and plan participation) by 20 percent. Recognizing a partial termination is important because the failure of an employer to do so, and to operate the plan accordingly, could result in the disqualification of the plan. For example, if you don't terminate your 401(k) plan after you close your business, many of those employees will be

Next, there are three notice requirements - one before the termination and two after. The first is to the plan participants. A Notice of Intent to Terminate (NOIT) must be given to participants not less than 60 days or more than 90 days before the termination date. The next notice is to the PBGC. A "Standard Termination Notice" must be filed with the agency on or before the 180th day after the termination date.

In addition, a Notice of Plan Benefits must be given to each participant, which explains the amount of benefits to which they are entitled. This notice must be given no later than the date the "Standard Termination Notice" is given to the PBGC. Finally, distribution of the plan assets must be made within the distribution deadline. To make distributions, the plan must either purchase an annuity from an insurance company (which will provide each participant with a lifetime benefit when he retires) or, if the plan document allows, issue a lump-sum payment that covers the present day value of the participant's benefit.

Once the decision has been made to terminate a plan, you must determine the appropriate steps for the type of plan you maintain, as each type has its own requirements.

A final optional step for a defined contribution or defined benefit plan is to file an IRS Form 5310 so that the plan may receive a determination letter from the IRS on the plan's qualification status at the time of the termination. Unless the plan is qualified (i.e., meets the standards set forth in the Internal Revenue Code) upon plan termination, participants will not have tax-favored status of their benefits upon distribution.

Easy out

The easiest plans to terminate are IRA-based plans, such as SIMPLE IRAs and SEPS. SIMPLE IRAs can be terminated by notifying participants that the plan has been discontinued. The notice should meet the annual notice requirement and, as a result, can be terminated no earlier than the next calendar year after the date of the notice. For example, if in 2007 you decide to terminate

asking for distributions from the plan. They will be entitled to 100 percent of all their elective deferrals and any employer made contributions regardless of their vesting schedule on the date of termination because of the 100 percent vesting rule triggered by the partial termination. If they receive less than they are entitled to, the plan is in danger of losing its qualified status, and you, as the employer and plan sponsor, will be liable to make the participants whole, which would include payment of the total amount due the former participants plus interest.

Once the decision has been made to terminate a plan, you must determine the appropriate steps for the type of pension plan you maintain, as each type of plan has its own requirements. This may require the advice of your financial advisor or even an experienced ERISA attorney.

Defined contribution

Terminating a defined contribution plan, such as a profit sharing or 401(k) plan, is a relatively easy process. One of the first steps in terminating such a plan is to execute a formal, written instrument that effectively terminates the plan on a particular date and to provide a written notice to all plan participants that explains the ceasing of contributions. Also, if the plan document is not in compliance with current law, it may need to be amended.

Next, the IRS requires that assets be distributed to the participants as soon as administratively feasible after the plan termination date. "Administratively feasible" is determined under all the facts and circumstances of a given case, but generally the IRS views this to mean within one year after the date of plan termination. The last required step is to file a final IRS Form 5500.

Defined benefit

On the other hand, if the plan is a defined benefit plan subject to Title IV of ERISA (Title IV), the termination insurance program administered by the Pension Benefit Guaranty Corporation (the PBGC), an employer can terminate the plan only if there is strict compliance with the requirements of Title IV. The first requirement in terminating a defined benefit plan is to select a proposed termination date and make certain that the plan has sufficient assets to provide all plan benefits.

your SIMPLE IRA, you must inform your employees within a reasonable period of time before the 60-day election period ending on Dec. 31, 2007, that there will be no SIMPLE IRA plan for 2008.

Generally, a SEP can be terminated at any time and funding of the plan can stop once it is terminated. When terminating a SEP, it is a good idea to notify your employees that the plan has been discontinued. You should also notify the financial institution that is handling the plan that it is being terminated and that no additional contributions will be made. Unlike other defined contribution plans, the funds in a SEP do not need to be distributed because the funds are in individual IRAs.

There is no need to notify the IRS that your SEP or SIMPLE IRA plan has been terminated.

Welfare benefit plan

Another type of employee benefit plan that you may need to consider is a welfare benefit plan that provides health insurance. If you maintain such a plan, the employees that are terminated from employment in connection with the closing of your practice will lose this benefit. Health insurance continuation rules enacted under COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1986) apply. However, to be eligible for COBRA coverage, the health plan must continue to be in effect for active employees. Therefore, if you terminate the health insurance plan, there will be no COBRA coverage available.

This is important to note so that you can properly advise your employees during the wrapping up process and enable them to plan accordingly. An employee may be able to obtain health coverage under his or her spouse's plan because termination of employment is considered a "qualifying event", allowing the spouse to make a change in benefit election. You should advise your employees of this opportunity, but point out that they must notify their spouse's plan in a timely manner.

There is more involved in closing our medical practice than just locking the doors. The goal of Part Two was to highlight just some of the employee plan issues that you may need to consider. (Note: Part One focusing on medical records ran in the July 24 issue of FMB.)

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