

Benefit Brief



SUBJECT: Record Retention and Reporting Requirements for Health and Welfare Plans

DATE: November 13, 2008

This Benefit Brief discusses ERISA, IRS, HIPAA, COBRA, and FMLA recordkeeping and reporting requirements for health and welfare plans.

Health and welfare benefit plans must retain documents, disclose information to participants and beneficiaries, and file reports with the Department of Labor (DOL) and the Internal Revenue Service (IRS). Failure to comply with recordkeeping and reporting rules is a fiduciary violation and could result in lawsuits, fines, and imprisonment.

ERISA's Record Retention and Reporting Requirements – Form 5500 Filers

Every plan that is required to file a Form 5500 annual report with the DOL must retain the records needed to sufficiently document the information. This recordkeeping rule applies not only to the plan administrator, but also to other people with reporting or certification requirements, such as insurers, accountants, and bankers.

A business associate (such as a third-party administrator or service provider) will have recordkeeping responsibilities when a group health plan discloses protected health information (PHI) to the business associate, and/or allows the business associate to create, receive, maintain, or transmit PHI on the plan's behalf. (See additional information below under *HIPAA Privacy Record Retention Requirements*.)

ERISA requires records to be kept and available for examination for six years after the Form 5500 filing date. Benecon recommends keeping records for eight years to accommodate late annual filings and statutes of limitations that apply to benefit claims and lawsuits. In the event that a claim is brought against an employer, all related records must be kept until final disposition of the matter.

All records needed to support the information that is required on the Form 5500 must be retained. These records will vary depending on the type of benefit plan, the way benefits are provided, the number of plan participants, and whether third parties provide services. The records should include enrollment information, benefit claims filed and paid or denied, vouchers, worksheets, receipts, applicable resolutions, and other records that support the information furnished on the Form 5500. Claims records needed to verify information reported on Schedules A or H should be maintained, if the plan is required to file these forms. The actual records must be retained, not summaries or recaps, except as discussed below under *Electronic Recordkeeping*.

ERISA welfare plans that are required to file Form 5500s include health FSAs, major medical, dental, long-term disability, AD&D, and group term life insurance plans. The requirement does not apply to cafeteria plans (unless they include a health FSA). A traditional Dependent Care Assistance Program (DCAP) that is funded through salary reductions is not an ERISA welfare plan, so the filing requirement does not apply. Generally, only plans with 100 or more participants at the beginning of the plan year (and self-funded plans using a trust or similar funding vehicle) must file a 5500.

Other ERISA Plan Recordkeeping Requirements

Benefit plan documents should be retained for the life of the plan. Summary plan descriptions, amendments, and plan termination documentation should be maintained for at least six years. The DOL requires employers to retain records that document the amount of plan benefits accrued by each participating employee for six years.

Multiple Employer Welfare Arrangements (MEWAs) that provide health benefits must file a Form M-1 with the DOL. Any records needed to document the information on a Form M-1 must be retained for six years.

IRS Record Retention and Reporting Requirements

Employers who maintain cafeteria plans, health FSAs, and DCAPs must keep records to show that the plans meet IRS requirements that permit the benefits to be excluded from employees' gross income. These records must be kept for at least four years. Employers are not currently required to file an annual tax return with the IRS for cafeteria plans, health FSAs, and DCAPs. However, employers should retain records for these plans for at least four years from the date a return would otherwise be due if a filing requirement were in effect. The records should document the number of employees, the number of employees eligible to participate under the plan, the number of employees participating under the plan, the total cost of the plan during the plan year, the name, address, and taxpayer identification number of the employer, the type of business, and the number of highly compensated employees of the employer.

Electronic Recordkeeping

The DOL and IRS have issued regulations regarding electronic record retention. These regulations are meant to ensure that electronic records are as secure, legible, accessible, and usable as the paper records would be. Paper records may be destroyed after they are transferred to an electronic recordkeeping system that complies with all requirements of the regulations.

COBRA Record Retention Requirements

COBRA regulations do not specify a recordkeeping requirement. However, it is usually recommended that records be maintained for six years, in accordance with ERISA requirements. All required COBRA notices, signed acknowledgments or documentation that notices were received by employees/qualified beneficiaries, detailed documentation related to COBRA not offered due to gross misconduct, late notification or Medicare entitlement, and all COBRA-related correspondence should be retained.

HIPAA Privacy Record Retention Requirements

HIPAA Privacy rules state that any required document must be retained for six years from either the date it was created or the date it was last in effect, whichever is later. Documents may be retained in written or electronic format. The following HIPAA privacy documents must be retained: the privacy policy, notice of privacy practices (all versions), all signed authorizations, PHI disclosure log, record request log, record requests, complaint log with copies of any written complaints, records of any sanctions imposed on employees, employee training manuals and procedures, business associate contracts, plan document amendments, and plan sponsor certification.

FMLA Record Retention Requirements

The following Family and Medical Leave Act documents should be retained for three years from the date the FMLA leave ended: the employer's FMLA policy; copies of all FMLA notices given to or received from employees; medical certification and related medical information; type of leave taken; dates or hours of leave taken; name, position, and pay rate of employee on leave; documents describing premium payments and employee benefits; records of any dispute between employer and employee; all correspondence with employee regarding FMLA leave.

Benecon recommends keeping all benefit-related documents for six years. Records required for Form 5500s should be kept for eight years. Benefit plan documents should be retained for the life of the plan.

If you have questions about record retention and reporting rules and responsibilities, please contact Danielle Omans at The Benecon Group at domans@benecon.com or the number below.

This Benefit Brief is provided for informational purposes only and does not constitute legal advice. The Benefit Brief contains only a summary of the applicable legal provisions and does not purport to cover every aspect of any particular law, regulation or requirement. Depending on the specific facts of any situation, there may be additional or different requirements. Please use this Benefit Brief as a guide and not as a definitive description of your compliance obligations.