



Policy Title: Record Retention Policy

Issue Date: May 15, 2015

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- 1. General.** This statement of policy is intended to provide guidance to the staff of beWellnm (referred to in this document as “the Exchange”) with respect to the retention and maintenance of records created and held by the Exchange.

This Record Retention Policy aids the efficient and economical management of the maintenance, retention, preservation, and disposal of Exchange records. Effective record management requires that records are kept only so long as they have some administrative, fiscal, or legal value. When records no longer fulfill the value for which they were created, they should be destroyed, absent legal requirements to retain the records, or some historic or other significance requiring permanent retention.

- 2. Definitions.** For purposes of this policy, the following terms shall have the following meanings:
 - “Active Period”** is defined as the period of time from the creation of the record through completion of the subject matter. In regard to contracts, the active period is the contract execution date through the termination date.
 - “Appeal Records”** means records relating to any appeals filed with the Exchange, including appeals relating to exemptions, eligibility determinations, or other matters within the purview of the Exchange’s duties, and including the appeal, the appeal decision, all papers and requests filed in an appeal proceeding, and a transcript or recording of any hearing testimony or official report containing the substance of what happened at the hearing and any exhibits introduced at the hearing.
 - “Application Materials”** means application forms and instructions provided to users of the Exchange, and completed applications and related materials provided by users of the Exchange.
 - “Copy”** means the transcribing by handwriting, photocopying, duplicating machine and reproducing by any other means so long as the record is not altered or damaged.

- E. **“Custodian”** means the person (guardian) responsible for the maintenance, care, or keeping of beWellnm records, regardless of whether the records are in that person’s actual physical custody and control.
- F. **“Electronic Records”** means electronic records, including e-mail, word-processing documents, spreadsheets, databases, websites, images, video, audio, multimedia, interactive documents, and scanned/digitized documents, and includes records created, sent, or received by employees, appointees, or elected officials, as well as contractors working with the Exchange.
- G. **“Eligibility, Enrollment, Coverage Records”** means eligibility determinations, redeterminations, notices relating to determinations and redeterminations, terminations of coverage and notices regarding terminations, and related materials, designations of authorized representatives regarding eligibility determinations and applications.
- H. **“Federal Tax Information”** means “return information” as defined in Internal Revenue Code Section 6103(b).
- I. **“HIPAA”** means the Health Insurance Portability and Accountability Act.
- J. **“Marketplace Records”** means Appeal Records, Application Materials, Eligibility, Enrollment, Coverage Records, Plan Information, Navigator Program Records, Marketplace Reports, and general Marketplace Records.
- K. **“Navigator Program Records”** means records pertaining to the consumer assistance program including standards, procedures, licensing, certification, and agreements with agents, brokers, navigators, application counselors, or in-person assisters.
- L. **“Non-records or non-essential records”** means records that may be routinely destroyed, the loss of which presents no obstacle to restoring daily business. The following specific types of materials are non-records: extra copies of correspondence, documents preserved only for convenience of reference, blank forms or books which are outdated, materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of beWellnm, preliminary and non-final drafts of letters, reports, and memoranda which may contain or reflect the working or deliberative process by which a final decision or position of beWellnm is reached, shorthand notes, stenographic tapes, mechanical recordings which have been transcribed, routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above, documents preserved for supply purposes only, form and guide letters, sample letters, form paragraphs subject files, including copies of correspondence, memoranda, publications, reports, and other information received by beWellnm (also referred to as reading files or information files).
- M. **“Personally Identifiable Information”** means information that can be used on its own or with other information to identify, contact, or locate a single person, or identify an individual in context, including personally identifiable information created or collected by the Exchange for the purposes of determining eligibility for enrollment in a qualified health plan, determining eligibility for insurance affordability programs, or determining eligibility for exemptions, which may only be used or disclosed to the extent necessary to carry out functions described in the

Regulations. Personally identifiable information includes, but is not limited to, a person's date of birth, social security number, mother's maiden name, and other similar data. Personally identifiable information includes Federal Tax Information.

- N. **"Plan Information"** means information on insurance plans, including enrollee satisfaction surveys, provider directories, assessments and ratings data, enrollment data and documentation provided to qualified health plans, including certification, recertification, and decertification.
- O. **"Protected Health Information"** shall have the meaning ascribed to the term in HIPAA.
- P. **"Public Record"** means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by beWellnm in pursuance of law or in connection with the transaction of public business, preserved or appropriate for preservation, by beWellnm as evidence of the organization, functions, policies, decisions, procedures, operations or other activities, or because of the informational and historical value of data contained therein.
- Q. **"Regulations"** shall mean Part 155 of Title 45 of the Code of Federal Regulations or other applicable federal and state laws and regulations relating to the Exchange.

3. Custodian's Responsibilities. The Custodian shall have the following duties and responsibilities:

- A. Plan, formulate, and prescribe basic files management and records destruction policies, standards, and procedures, in accordance with this Policy.
- B. Develop, disseminate, and coordinate Records maintenance, retention, and destruction procedures, or computer assisted retrieval programs to meet current and long-term needs of the Exchange.
- C. Train other personnel in the fundamentals of records management and their roles in the records management program.
- D. Review retention schedule, appended hereto as Schedule A, annually and update or amend as needed and maintain inventory of records as described in the Policy.
- E. Implement destruction in accordance with this Policy.
- F. Periodically monitor compliance with this Policy and applicable Regulations governing security of Personally Identifiable Information and Protected Health Information.
- G. Perform audit and reporting duties in accordance with this Policy.

4. Retention of Records

- A. **Inventory of Records.** The Custodian shall maintain a log of the Exchange Records, including the following information:
 - i. **Title of Records.** Include category or subject matter of Records or group of Records, as accurately or practicable.

- ii. **Location of Records.** Include general location regarding the location for the Records stored, and whether the Records are maintained on-site or off-site.
 - iii. **Storage Medium.** Include information regarding the media type, including electronic, paper, microfilm, etc., and whether there are multiple copies and mediums for the Record or group of Records.
- B. **Retention Periods.** The Custodian shall maintain and update Schedule A with record retention periods for all Exchange Records. Records shall be maintained in paper or electronic format for the periods set forth in Schedule A. The retention period for records not covered in Schedule A shall be for the active period plus ten years, unless determined by the Custodian that a different period is advisable. The Custodian shall consider the following in making that determination (in descending order of priority):
 - i. **Statutes and regulations.** For certain records, federal and state statutes and regulations establish mandatory record retention periods. Applicable statutes and regulations shall be considered for any Record. Importantly, the HIPAA privacy and security rules require certain documents containing Protected Health Information to be maintained for 6 years from the date the document was created or the last effective date, whichever is later. The Regulations require certain Records regarding qualified health plan data to be retained for ten years.
 - ii. **Contracts.** Third parties and vendors may require that records be retained for certain periods as part of their contracts. The violation of such a contract provision may constitute breach of contract. Any applicable contract shall be considered in determining the retention period for any Record.
 - iii. **Statutes of Limitations.** If the foregoing standards do not require a longer retention period, records should normally be retained for at least the statute of limitations period for claims to which the records may relate. For example, the New Mexico statute of limitations for actions based on a written contract is six years.
- C. **Pending or Threatened Litigation or Investigation.** The records retention or destruction policy should be suspended immediately for any Records relevant to any threatened or pending government investigation or litigation. The improper destruction of such Records can result in serious civil and criminal penalties ranging from the loss of evidence necessary to prove or defend against a claim, to tort liability for spoliation of evidence, to severe federal criminal penalties. The Custodian must approve the destruction of any Records relating to pending, past, or threatened investigations or litigation prior to destruction thereof.
- D. **Personally Identifiable Information and Protected Health Information.** The Exchange shall ensure that records containing Personally Identifiable Information or Protected Health Information are retained and protected in accordance with the

Regulations, HIPAA, or other applicable law. Such information may only be created, collected, used, or disclosed in accordance with the Regulations.

i. Privacy and Security of Personally Identifiable Information and Protected Health Information

The Exchange shall identify Records containing Personally Identifiable Information or Protected Health Information and ensure that adequate safeguards are in place to maintain confidentiality of such Records, permit only restricted access to such Records and to prevent inadvertent disclosure thereof. The Exchange has developed and utilizes secure electronic interfaces when sharing Personally Identifiable Information. Records containing Personally Identifiable Information or Protected Health Information shall only be created, retained, accessed, and used to the extent necessary to accomplish the specific permitted purpose for which such information is required and Protected Health Information may not be used to discriminate against any individual to which such information relates. Records containing Personally Identifiable Information or Protected Health Information shall not be disclosed to anyone other than personnel necessary to accomplish the specific permitted purpose for which such information is required or to the individual to whom such information relates upon written request therefor. Any Records containing Personally Identifiable Information or Protected Health Information must be destroyed at the end of the applicable retention period in a secure manner, either through shredding, incineration, or through another method which ensures confidentiality and non-disclosure of Personally Identifiable Information or Protected Health Information.

ii. Access to Personally Identifiable Information or Protected Health Information by the Individual

An individual may request access to the Personally Identifiable Information or Protected Health Information about such individual by providing a written request to the Exchange. The Exchange shall provide access to such information within a reasonable time frame and in a readable format. Individuals may dispute the accuracy or integrity of such Personally Identifiable Information or Protected Health Information and request correction of erroneous information by filing a written request to the Exchange setting forth the inaccuracy and providing evidence of the correct information. Such request shall be reviewed and responded to in writing within a reasonable timeframe. In the event the request is denied, the individual may appeal through the standard appeal process and record of the request, denial, and appeal shall be retained by the Exchange in accordance with Schedule A.

iii. **Breaches of Security of Personally Identifiable Information or Protected Health Information**

Breaches of the security of Personally Identifiable Information or Protected Health Information shall be immediately reported to the Custodian. The Exchange shall ensure notification to the affected parties and others, as may be required by applicable law or regulation or any contract applicable to the data that has been breached, as soon as practicable following discovery of the breach and in any event within the timeframes by applicable law.

Within one hour of suspected security breach or incident discovery, beWellnm will notify the designated CMS State Officer, complete the CMS Incident Response Reporting Form, and e-mail the form to: HIX.incidents@cms.hhs.gov.

Within 24 hours of suspected loss, breach, or misuse of Federal Tax Information (FTI), beWellnm will notify the CMS State Officer and contact the U.S. Treasury Inspector General for Tax Administration (TIGTA) and the IRS Office of Safeguards at:

TIGTA Hotline Number: 1.800.589.3718
Website: www.treasury.gov/tigta/
IRS Office of Safeguards: safeguardreports@irs.gov

In the event of a breach, the Policy shall be reviewed to determine whether amendment is necessary to ensure appropriate treatment and safeguarding of Personally Identifiable Information and Protected Health Information and remedial action shall be taken as necessary. All breaches will be reported to the Operations Committee during the next scheduled meeting.

iv. **Contracts with Vendors, Contractors, and Third Parties**

All contracts between the Exchange and its contractors or vendors shall provide obligations on the part of such vendors or contractors to comply with federal and state laws, including laws and regulations regarding privacy and security of Personally Identifiable Information and Protected Information as set forth in this Policy or other applicable Exchange policies and procedures. Such contracts shall contain provisions permitted by the Exchange or its designee to audit the records of such third party to ensure compliance with Exchange policies, procedures, and applicable federal and state law and regulations.

- E. Electronic Records.** Electronic Records are Records subject to this Policy. Retention and destruction of such Records is governed by the content of the Records, not the form in which the Records are created or stored. Electronic Records shall be maintained in accordance with the retention schedule that covers

the content of the Record. The Custodian shall train personnel, officials, staff, and board members regarding the retention of Electronic Records to manage Records and comply with applicable laws, regulations, and this Policy.

The Exchange shall establish and maintain an electronic information system to produce, use, and store data files to comply with this Policy. Such system shall:

- (a) Enable authorized users to retrieve desired documents, through an indexing or text search system;
- (b) Provide appropriate security to ensure integrity of the documents and restrict accessibility where necessary to protect Personally Identifiable Information or Protected Health Information;
- (c) Ensure that a standard interchange format is provided, when necessary, to permit the exchange of documents on electronic media between agency computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another;
- (d) Address disposition of documents in accordance with this Policy and applicable laws, rules, regulations, and policies;
- (e) Maintain sufficient information to allow for identification of each document within a given electronic information system; and
- (f) Correlate official file copies maintained in electronic recordkeeping systems with related records on paper, microform, or other media as appropriate.

Electronic Records shall be associated with descriptive information known as metadata, which provides evidence about a record's content and the circumstances in which it was created/received and used, and which information should be retained until the final disposition of the records. Examples of metadata include: title, date created/modified, creator/editor, reference number, record series, access/use restrictions, subject, relationship to other records, and similar data.

Electronic records shall be archived for the specified period in accordance with Schedule A (based on the content of the Record). Electronic Records that need to be archived may be attached to an e-mail that may then be sent to an address supplied by the IT department, or printed out and filed depending upon the determination made by the Records Custodian. Records will then be archived for the specified period in Schedule A. Upon termination of each Fiscal Year, the Records Custodian shall submit the necessary documentation and direct the IT department to purge Electronic Records which are no longer subject to retention.

Although Electronic Records are generally subject to this Policy, some additional requirements applicable to specific types of Electronic Records are contained herein for guidance on the management specific to Electronic Records.

i. E-Mail and Portable Storage Media

All personnel, directors, and others associated with the Exchange shall be required to have and use an Exchange e-mail address when engaging in beWellnm business. Members of the Board of Directors shall copy the Health Exchange account on any e-mails relating to Exchange business. Departing personnel, directors, and others associated with the Exchange shall return or destroy, as appropriate, all portable storage media or other device capable of storing data in the individuals' possession containing Electronic Records of the Exchange. Personnel, directors, and others associated with the Exchange may not copy or transfer Electronic Records to another device without prior approval of the Custodian.

The following information should be retained for each electronic mail message subject to retention pursuant to Schedule A: (i) names of the sender and addresses, including those who are cc:'d on an e-mail, (ii) the date the message was sent, (iii) message metadata, (iv) any attachment, and (v) any other transmission data necessary for the purpose of providing the context of the record.

Messages sent or received using an external electronic mail system should ensure that the records are preserved in the appropriate recordkeeping system if they are Records as defined in this policy (i.e., related to Exchange business), they must be maintained in accordance with this Policy, whether or not the e-mail used is the Exchange e-mail, and whether or not computer is a personal computer.

Emails that are not subject to longer retention requirements described in Schedule A shall be deleted every ninety days. Each individual shall be responsible for determining if any given Record is subject to retention in accordance with Schedule A, or as otherwise required by this Policy or applicable laws and regulations.

ii. Website

Records created or posted to the website are subject to the same record requirements as those created or maintained on internal, non-web based electronic record keeping systems. The Exchange shall retain and collect data regarding transactions conducted via the website, including submission of application, payments, and other on-line business.

iii. Social Media

The Exchange shall retain copies of social media content in accordance with website requirements.

iv. Security of Electronic Records

The Exchange shall ensure only authorized personnel have access to Electronic Records, back-up recovery to protect against information loss, personnel and contractors/vendors are trained or otherwise required to safeguard confidential information (including Personally Identifiable Information or Protected Health Information), minimize risk of unauthorized disclosure or alternation of records, and ensure security is included in computer system security plans.

5. Medium for Records

Records may be maintained in paper files, in boxes clearly marked with the contents of the files and the disposal date, in accordance with Schedule A's retention schedule. Electronic records may be maintained electronically. After three years, non-essential Records shall be relocated off-site, with an index on-site logging the locations and contents of boxes stored off-site.

6. Destruction of Records

- A. Destruction Period.** Records shall be destroyed at the end of the retention period provided on Schedule A for the relevant Record. Documents not listed on Schedule A may only be destroyed upon prior approval by the Custodian, with consultation with legal counsel as appropriate. Non-essential records may be shredded on a daily basis, so long as destruction of such Records does not contradict any retention requirements listed in Schedule A.

Records shall be reviewed annually and purged or retained in accordance with the retention periods set forth on Schedule A, or as otherwise prudent, in accordance with this Policy.

Full weekly backups and daily incremental backups are maintained. Data can be recovered from the backup facility where snapshots of the data is stored on a real time basis.

- B. Method of Destruction.** Any reasonable method of destruction may be utilized for destruction of Records, including hiring a mobile shredding company to dispose of the data. The Custodian shall maintain a log of all Records destroyed, including the type of the record, date destroyed, and method of destruction. Smaller quantities may be shredded internally, so long as inadvertent disclosure is avoided.

Records containing confidential information, including Personally Identifiable Information and Protected Health Information, shall be destroyed in a method that ensures destruction of the Records, protects against disclosure, and preserves the confidentiality of such information (i.e., shredding or incinerating).

7. Third-Party Vendors

To the extent that the Exchange utilizes an outside entity to assist with records retention or destruction, the Exchange shall ensure that it has ACA and HIPAA-compliant contract with the entity to the extent such Records may contain Personally Identifiable Information and Protected Health Information. Privacy and security rules require that covered entities take appropriate administrative, physical, and technical safeguards to protect health information. Covered entities must sign the beWellnm Privacy and Security Agreement, which is in accordance with Section 1411(g) of the Affordable Care Act (42 U.S.C. § 18081(g)) and 45 CFR 155.260 and HIPAA.

8. Annual Review

The Custodian shall conduct an annual review of this Policy. The annual review process shall include: (i) an inventory of records, (ii) review and update of the retention schedule, and (iii) report to the Operations Committee of the Exchange. In addition, the Custodian shall review annually the Exchange's electronic information systems for conformance with procedures, standards, and policies.

A. Retention Schedule and Policy Update

Once the inventory is conducted and the log is updated, it can be used to review and update the Records Retention Schedule (Schedule A). Schedule A shall be updated to reflect records currently maintained by the Exchange. In addition, this Policy should be amended as necessary to ensure that all Records are dealt with within the Policy.

B. Annual Records Report

At the end of each fiscal year, the Custodian shall prepare a report to the Operations Committee that includes any updates and recommended amendments, as applicable, to the Policy and Retention Schedule. The Report shall also contain detailed information relating to any breaches of this Policy that have occurred during the fiscal year, the responses to any breaches, and remedial actions taken to ensure the breach is not repeated. The Report shall include a log of all records to be destroyed in accordance with this Policy for approval. Finally, the Report shall include an assessment of whether data is being properly retained and destroyed in accordance with this Policy.

Upon review and approval by the Operations Committee, the Operations Committee Chair will update the Board of Directors at a subsequent Board of Directors meeting.

PASSED, APPROVED, AND ADOPTED this 18th day of March, 2016.

NEW MEXICO HEALTH INSURANCE EXCHANGE BOARD

Approved by:

Dr. James R. Damron

Chair

**Schedule A
Records Retention Schedule**

Record Series	General Description	Retention Period
Administration		
Organizational Governance	Articles of incorporation: Bylaws, Board meeting minutes and recordings, Committee meeting minutes (as applicable), Committee Charters, Board resolutions, Annual reports	Permanent
Policies and Procedures	Board, administrative, or committee policies and any delegation orders	Active period + 10 years
Internal Reports	Reports from staff, departments, and/or committees	10 years
Property Records	Deeds, titles, licenses, permits, appraisals	Permanent
Construction Records	Construction related contracts, work orders, certificates, etc.	Permanent
Contracts, Leases, RFPs, Procurement Files	All contracts and leases including vendor contracts, equipment, etc., and documents in a procurement file	Active Period + 10 years, including any warranty period
Litigation Case Files	All files relating to litigation involving the Exchange	Permanent
Feasibility Studies	Any studies conducted before installation and implementation of technology, equipment, process or procedure, including studies of system analysis and major changes of these systems	Permanent
Executive Correspondence	Correspondence that documents how the office is organized and functions, pattern of action, its policies and procedures, and achievements	10 years
General Correspondence	Routine correspondence not duplicated elsewhere, which does not include policy decisions or directives, how the office is organized, how it functions, its pattern of action, policies and procedures, and achievements. Records that are general in nature and do not relate directly to primary responsibilities of an office or agency. Letters of appreciation, congratulations, charity fund, parking assignments, records of a general nature which could be created in the course of	10 years

Record Series	General Description	Retention Period
	administering agency programs, and could include general internal communications.	
Working Papers and Technical Reference Files	Records which have a short-term use and comprise background records such as preliminary studies, drafts, analyses, notes, interim reports, drawings, periodicals, books, clippings, extra copies, brochures, catalogs, vendor price lists, publications	Active period and destroy if no longer administratively valuable
Daily Activity Schedules	Records containing substantive information regarding official activities, not otherwise incorporated in official files, such as calendar schedules, appointment books, logs, diaries, meeting documentation, telephone calls, trips, visits, and other employee activities	Active period + 1 year
Business and Finance Records		
General Financial Records	-Accounts payable/receivable -Financial reports -Financial audits -Bank records (statements, checks, etc.) -Budgets	10 years
Compliance Records		
Compliance Documentation	Employee training, auditing and monitoring, reports of issues, investigations, correspondence with regulators, self-disclosures	10 years
Privacy and HIPAA	Employee training, employee sanctions, complaints, privacy assessment, security standards documentation, policies and procedures	10 years from latter of the date created or last effective date
Federal Tax Information	Logs of receipt, use, disclosure, etc.	10 years
Marketplace Records		
Information Disclosures	Disclosures provided to Exchange users	Active period + 10 years
Enrollee Surveys and Data	Survey and data conducted by or retained by Exchange or third party on behalf of the Exchange	Active period + 10 years
Call Center Logs	Data collected regarding call centers utilized by Exchange users	Active period + 10 years
Outreach and Education Materials	Materials created and provided to Exchange users or the general public for educational or informational purposes	Active period + 10 years
Appeal Records	Records relating to any appeals filed with the Exchange, including appeals relating to exemptions, eligibility determinations, or	Active period + 10 years

Record Series	General Description	Retention Period
	other matters within the purview of the Exchange's duties including the appeal, the appeal decision, all papers and requests filed in an appeal proceeding, and a transcript of recording of any hearing testimony or official report containing the substance of what happened at the hearing and any exhibits introduced at the hearing	
Application Materials	Blank and completed application forms and instructions provided to users of the Exchange	Active period + 10 years
Eligibility, Enrollment, Coverage Records	Eligibility determinations, redeterminations, notices relating to determinations and redeterminations, terminations of coverage and notices regarding terminations, designations of authorized representatives regarding eligibility determinations and applications	Active period + 10 years
Plan Information	Analyses and summaries of insurance plans, including enrollee satisfaction surveys, provider directories, assessments, ratings data, enrollment data, and documentation provided by OSI to qualified health plans, determinations of qualified health plans, including certifications, recertification, and decertification	Active period + 10 years
Navigator Program Records	Records pertaining to the navigator program including standards, procedures, licensing, certifications, and agreements, with agents, brokers, navigators, and counselors	Active period + 10 years
Grant Materials	Applications for federal or state grants and related materials, including notices of awards, grant agreements, documentation and reports required to be retained pursuant to grant agreements, and all related records	Active period + 10 years (or other period required by Grant Agreement)
Human Resources/Personnel		
Employment Info	Payroll, job descriptions, wages, job evaluations, employment contracts, time cards, wage rate schedule, W-2s, W-4s	10 years from date of employment
Employment Actions	Hiring, promotion, demotion, transfer, termination, layoff, pay rates or compensation terms	10 years from date of employment

Record Series	General Description	Retention Period
Employment and Social Security Taxes		10 years after taxes due (or paid, if paid after due date) or claim filed
ERISA Benefit Plan Records	Records required to be filed pursuant to ERISA	Date of filing + 10 years
Medical and Exposure Records Pertaining to Employee Exposure to Toxic Substances or Harmful Physical Agents (OSHA)	Employment questionnaires or histories, employment medical exams, first aid records, medical opinions or diagnoses, descriptions of treatments and prescriptions, medical complaints	30 years from date of employment
Marketing and Public Relations		
Marketing Materials	Marketing and public relations materials	10 years from last effective or revision date
Contributor Records	Public Relations	Permanent
Publications	Marketing Publications	Permanent
Risk Management		
Accident/Incident Reports		11 years from date of accident/incident
Liability Policies		For occurrence based policies, 20 years after expiration. For claims-made policies, 6 years after expiration
Property and Casualty Insurance Policies		10 years after expiration
Assets		
Computer Systems	Hardware documentation (operational manuals, hardware, configurations, control systems)	Life of Asset + 5 years
Other Assets		Life of Asset + 5 years