

1 Cabinet for Health and Family Services
2 Office of the Kentucky Health Benefit Exchange
3 (New Emergency Administrative Regulation)
4 900 KAR 10:020E. Kentucky Health Benefit Exchange Small Business Health Options
5 Program.

6 RELATES TO: KRS 194A.050(1), 42 U.S.C. Section 18031, 45 C.F.R. Parts 155 and
7 156.

8 STATUTORY AUTHORITY: KRS 194A.050(1)

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
10 Services, Office of the Kentucky Health Benefit Exchange, has responsibility to
11 administer the state-based American Health Benefit Exchange. KRS 194A.050(1)
12 requires the secretary of the cabinet to promulgate administrative regulations necessary
13 to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency
14 of the individual citizens of the Commonwealth; to operate the programs and fulfill the
15 responsibilities vested in the cabinet, and to implement programs mandated by federal
16 law or to qualify for the receipt of federal funds. This administrative regulation
17 establishes the policies and procedures relating to the operation of a Small Business
18 Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R.
19 parts 155 and 156.

20 Section 1. Definitions.

21 (1) "Agent" is defined by KRS 304.9-020(1).

1 (2) "Annual open enrollment period" means the period each year during which a
2 qualified individual may enroll or change coverage in a qualified health plan through an
3 exchange.

4 (3) "Annual renewal date" means the date following twelve (12) months from the first
5 day of the first coverage month, and every twelve (12) months thereafter.

6 (4) "Children's Health Insurance Program "or "CHIP" is defined in 42 C.F.R. 457.10.

7 (5) "Composite rate" means the average rate determined by adding the full age-
8 adjusted premium rates for the employer-designated reference plan for all workers in
9 the group and dividing by the total number of workers.

10 (6) "COBRA" means continuation of coverage under the Consolidated Omnibus
11 Budget Reconciliation Act of 1986, as amended.

12 (7) "Department of Health and Human Services" or "HHS" means the U.S.
13 Department of Health and Human Services.

14 (8) "Employer identification number" means a unique numerical identifier which is
15 used to identify a business, partnership, or other entity.

16 (9) "Full-time employee" is defined by 45 C.F.R. 155.20.

17 (10) "Full-time equivalent employee" shall be the number of employees determined
18 using the method set forth in section 4980H(c)(2) of the Internal Revenue Code.

19 (11) "Group participation rate" means the number of eligible employees enrolled in a
20 group health plan in relation to the number of employees eligible to enroll in the group
21 health plan.

22 (12) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

23 (13) "Indian" means any individual as defined in 25 U.S.C. 4506(d).

1 (14) "Initial open enrollment period" means the period during which a qualified
2 individual or qualified employee may enroll in health coverage through an exchange
3 during the 2014 benefit year which shall:

4 (a) Begin October 1, 2013; and

5 (b) Extend through March 31, 2014.

6 (15) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-
7 based exchanged conditionally approved by HHS under standards set forth in 45 C.F.R.
8 §155.105 to offer qualified health plans on January 1, 2014.

9 (16) "Kentucky Health Insurance Premium Payment Program" or "KHIPP" means a
10 Kentucky Medicaid program that pays the costs of some or the entire employee portion
11 of employer-sponsored health insurance premiums.

12 (17) "Medicaid" means coverage in accordance with Title XIX of the Social Security
13 Act, 42 U.S.C. sections 1396 et seq. as amended.

14 (18) "Medicare advantage plan" means a Medicare program under Part C of title
15 XVIII of the Social Security Act, which provides Medicare Part A and B benefits through
16 a private insurer.

17 (19) "Metal level of coverage" means health care coverage based on a specified
18 share of the full actuarial value of the essential health benefits that shall be a:

19 (a) Bronze level with an actuarial value of sixty (60) percent, plus or minus two (2)
20 percent;

21 (b) Silver level with an actuarial value of seventy (70) percent, plus or minus two (2)
22 percent;

23 (c) Gold level with an actuarial value of eighty (80) percent, plus or minus two (2)

1 percent; and

2 (d) Platinum level with an actuarial value of ninety (90) percent, plus or minus two (2)
3 percent.

4 (20) "Minimum essential coverage" is defined in 26 C.F.R. 1.5000A-2.

5 (21) "Participation agreement" means an agreement between the Office and a small
6 employer participating in the KHBE Small Business Health Options Program.

7 (22) "Plan year" means a consecutive twelve (12) month period during which a
8 health plan provides coverage for health benefits.

9 (23) "Premium" is defined by KRS 304.14-030.

10 (24) "Qualified employee" means an individual employed by a qualified employer
11 who has been offered health insurance coverage by the qualified employer through the
12 SHOP.

13 (25) "Qualified employer" means a small employer that elects to offer, at a minimum,
14 all full-time employees of such employer eligible for one or more QHPs in the small
15 group market offered through a SHOP.

16 (26) "Qualified Health Plan" or "QHP" means a health plan that has in effect a
17 certification issued by the KHBE that it meets the standards described in 45 CFR 156
18 subpart C.

19 (27) "Reference plan" means the selection of a single plan on which an employer will
20 base their contribution and employees are then able to elect other plans and pay the
21 premium differential.

22 (28) "Service area" means a geographical area in which an individual shall reside or
23 be employed in order to enroll in a QHP.

1 (29) "Shared responsibility payment" means a penalty imposed for failing to meet the
2 requirement to maintain minimum essential coverage in accordance with 26 U.S.C.
3 Section 5000A.

4 (30) "SHOP" means a Small Business Health Options Program operated by an
5 Exchange through which a qualified employer can provide his or her employees,
6 spouses and their dependents with access to one or more QHPs.

7 (31) "Small employer" means for a plan year beginning:

8 (a) Before January 1, 2016, an employer who shall employ an average of at least
9 two (2) but no more than fifty (50) full-time employees; or

10 (b) On or after January 1, 2016, an employer who employed an average of at least
11 one (1) but no more than one hundred (100) full-time equivalent employees on business
12 days during the preceding calendar year and who employs at least one (1) employee on
13 the first day of the plan year.

14 (32) "Special enrollment period" means a period during which a qualified employee
15 who experiences certain qualifying events may enroll in, or change enrollment, in a
16 QHP through the KHBE outside the initial and annual open enrollment periods.

17 (33) "TRICARE" means the Department of Defense health care program
18 administered serving active uniformed service members, retirees and their families.

19 Section 2. Employer Eligibility and Participation Requirements.

20 (1) Beginning October 1, 2013, a small employer shall be eligible to purchase health
21 insurance coverage for its small group through the KHBE SHOP if the employer is a
22 small employer that:

23 (a) Elects to offer, at a minimum, a full-time employee coverage in a QHP through

1 the KHBE SHOP; and

2 (b) Either:

3 1. Has its principal business address in the service area and offers coverage to its
4 full-time employees through the KHBE SHOP; or

5 2. Offers coverage to each eligible employee through the KHBE SHOP serving that
6 employee's primary work site;

7 (c) Has a valid federal employer identification number; and

8 (d) Has a group participation rate of at least seventy five (75) percent in accordance
9 with subsection (6) of this section.

10 (2) A small employer participating in more than one SHOP and meeting the criteria
11 in subsection (1) of this section, shall offer coverage to its employees whose primary
12 work site is in the service area of the KHBE SHOP.

13 (3) A small employer may submit an application to participate in KHBE SHOP:

14 (a) Via the KHBE website at XXXX;

15 (b) By telephone by contacting the KHBE customer service center;

16 (c) By mail; or

17 (d) In person.

18 (4) A qualified employer who ceases to be a small employer solely by reason of an
19 increase in the number of employees shall be eligible to participate in the KHBE SHOP
20 until the employer:

21 (a) Fails to otherwise meet the eligibility criteria of this section; or

22 (b) Chooses to no longer purchase health insurance coverage for qualified
23 employees through the KHBE SHOP.

1 (5) As part of the verification of an application of the employer application, a small
2 employer shall submit:

3 (a) An employee census that includes name, address, and social security number of
4 all eligible employees;

5 (b) Proof of a federal employer identification number; and

6 (c) Copy of most recent Employer's Quarterly Unemployment Wage and Tax
7 Report.

8 (6) A calculation of a group participation rate shall not include in the count of eligible
9 employees an employee:

10 (a) Enrolled in:

11 1. A group health plan offered by a second employer;

12 2. A group health plan offer through the spouse of the employee;

13 3. An individual health plan;

14 4. Medicare, including a Medicare advantage plan;

15 5. Medicaid or CHIP;

16 6. TRICARE or other veteran's health coverage;

17 7. Coverage identified in 45 C.F.R. 156.602;

18 8. Coverage recognized by HHS as meeting the requirement for minimum essential
19 coverage under 45 C.F.R. 156.604.

20 (b) Issued a certificate of exemption from the shared responsibility payment by
21 KHBE or HHS; or

22 (c) Not residing in the service area of at least one QHP offered by the employer.

23 (7) If a small employer's group participation rate falls below the requirement in

1 subsection (1)(d) of this section during a plan year, the qualified small employer shall be
2 eligible to participate in the KHBE SHOP through the remainder of the plan year.

3 (8) If the information submitted by a small employer is inconsistent with the eligibility
4 standards in this section, the employer shall have thirty (30) days after a notification of
5 the inconsistency, to present documentation to support the employer's application or
6 resolve the inconsistency.

7 (9) A qualified small employer participating in the KHBE SHOP shall:

8 (a) Disseminate information to its qualified employees about the process to enroll in
9 a QHP through the KHBE SHOP;

10 (b) Make a contribution toward the premium of any qualified employee in accordance
11 with Section 4 of this administrative regulation;

12 (c) Remit to the KHBE employer and employee contributions upon receipt of invoice
13 from the KHBE;

14 (d) Notify the KHBE of a change in eligibility status of an employee or dependent of
15 an employee enrolled in a QHP within thirty (30) days of the event; and

16 (e) Enter into a participation agreement with the KHBE.

17 (10) A small employer may designate an agent to:

18 (a) Perform an employer function on behalf of the employer; or

19 (b) Assist an employee with enrollment and plan selection.

20 Section 3. Employer Selection of Qualified Health Plans.

21 (1) A small employer shall make available to a qualified employee:

22 (a) A single QHP;

23 (b) All available QHPs at a single metal level of coverage; or

1 (c) If metal levels are contiguous, one or more QHPs at more than one metal level of
2 coverage.

3 (2) A qualified employer may purchase coverage through the KHBE SHOP for its
4 small group at any time in a year.

5 (3) The employer's plan year shall consist of the 12-month period beginning with the
6 qualified employer's effective date of coverage.

7 (4) A small employer shall not purchase federal COBRA benefits through the KHBE
8 SHOP.

9 Section 4. Minimum Contribution.

10 (1) A small employer shall select a QHP or more than one (1) QHP to offer to a
11 qualified employee in accordance with Section 3 of this administrative regulation.

12 (2) If a small employer selects more than one (1) QHP, the employer shall select a
13 QHP to serve as a reference plan on which a contribution shall be based.

14 (3) A qualified employer shall define:

15 (a) A percentage contribution of at least fifty (50) percent toward a premium for
16 employee-only coverage under the reference plan; and

17 (b) For each tier of coverage offered, a percentage contribution toward a premium
18 for the tier of coverage under the reference plan.

19 (4) An employee shall apply the employer contribution determined in subsection (3)
20 of this section toward a QHP selected by the employee.

21 (5) At the request of a small employer, the KHBE SHOP shall calculate a composite
22 rate for the reference plan that shall be the basis for the employer contribution toward a
23 premium.

- 1 (6) A tier of coverage shall be:
- 2 (a) Employee-only;
- 3 (b) Employee and spouse;
- 4 (c) Employee and child or children; or
- 5 (d) Family.

6 Section 5. Annual Employer Election Period.

7 (1) On an annual basis a small employer shall have a thirty (30) day period prior to
8 the completion of the employer's plan year and before the annual open enrollment to
9 change the employer's participation in the KHBE SHOP for the next plan year.

10 (2) During the employer annual election period, a small employer may change:

11 (a) The method by which the qualified employer makes QHPs available to qualified
12 employees in accordance with Section 3 of this administrative regulation;

13 (b) The employer contribution towards the premium of a qualified employee in
14 accordance with Section 4 of this administrative regulation; and

15 (c) The QHP or QHPs offered to qualified employees in accordance with Section 3 of
16 this administrative regulation.

17 Section 6. Employee Eligibility.

18 (1) An employee shall be eligible to enroll in a QHP through the KHBE SHOP if the
19 employee receives an offer of coverage from a qualified employer.

20 (2) An employee shall submit an application to enroll in a QHP:

21 (a) Via the internet (website);

22 (b) By telephone by calling the KHBE customer service center;

23 (c) By mail; or

1 (d) In person.

2 (3) If the information submitted by an employee is inconsistent with the eligibility
3 standards in this section, the employee shall have thirty (30) days after a notification of
4 the inconsistency, to present documentation to support the employee's application or
5 resolve the inconsistency.

6 (4) A qualified employee may designate an individual or organization as an
7 authorized representative in accordance with 900 KAR 10: 030.

8 (5) An eligible employee who does not want to enroll in a QHP offered by a qualified
9 employer shall complete an employee waiver of coverage.

10 (6) A small employer shall be notified if a qualified employee enrolled in a QHP
11 terminates coverage in the QHP.

12 Section 7. Enrollment and Effective Dates of Coverage.

13 (1) A qualified employee shall select a QHP or change a QHP offered by a qualified
14 employer in accordance with Section 3 of this administrative regulation during:

15 (a) The initial open enrollment period;

16 (b) An annual open enrollment period in accordance with Section 7 of this
17 administrative regulation;

18 (c) A special enrollment period in accordance with Section 8 of this administrative
19 regulation; or

20 (d) For a qualified employee who is newly eligible, an enrollment period outside of
21 the employer's open enrollment period in accordance with Section 8(3) of this
22 administrative regulation.

23 (2) The length of an initial open enrollment period and annual open enrollment

1 period shall be:

2 (a) Thirty (30) days; and

3 (b) At the request of a small employer, extended up to a maximum of fifteen (15)
4 additional days.

5 (3) Coverage in a QHP shall be effective:

6 (a) If open enrollment ends between the first and fifteenth day of any month, the first
7 day of the following month;

8 (b) If open enrollment ends between the sixteenth and the last day of any month, the
9 first day of the second following month; and

10 (c) Upon receipt of the full first month's premium from a small employer.

11 (4) (a) Except for the death of an employee or dependent of an employee, the
12 effective date for cancellation of coverage shall be the last day of the month during
13 which the event occurred.

14 (b) The effective date for cancellation of coverage for the death of an employee or
15 dependent of an employee shall be the date of death.

16 (5) Unless an employee changes coverage due to a qualifying event, a premium
17 shall not change until the employer's annual renewal date.

18 Section 8. Annual Open Enrollment Period.

19 (1) A qualified employee shall select a QHP or change QHPs during an annual open
20 enrollment period that shall be:

21 (a) No less than thirty (30) days; and

22 (b) Prior to the end of the employer's plan year.

23 (2) If a qualified employee enrolled in a QHP remains eligible for coverage, the

1 qualified employee shall remain enrolled in the QHP selected the previous year unless:

2 (a) The qualified employee enrolls in another QHP; or

3 (b) The QHP is no longer available to the qualified employee.

4 (3) (a) A newly added employee who becomes eligible after the beginning of the
5 plan year and prior to the annual enrollment period shall have thirty (30) days prior to
6 the date the newly added employee becomes eligible for employer-sponsored coverage
7 to enroll in a QHP.

8 (b) The effective date of coverage of a newly added employee is the first day of the
9 month following the month the newly added employee becomes eligible for employer-
10 sponsored coverage.

11 Section 9. Special Enrollment Period.

12 (1) A qualified employee or dependent of a qualified employee may enroll in a QHP
13 or a qualified employee may change QHPs during a special enrollment period if:

14 (a) The qualified employee or dependent of a qualified employee loses minimal
15 essential coverage;

16 (b) The qualified employee gains a dependent through marriage, birth, adoption or
17 placement for adoption;

18 (c) The qualified employee or dependent of the qualified employee enrolls or fails to
19 enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee,
20 or agent of the KHBE or HHS;

21 (d) The qualified employee or dependent of the qualified employee demonstrates to
22 the KHBE that the QHP in which the qualified employee or dependent of the qualified
23 employee is enrolled substantially violated a material provision of its contract in relation

1 to the enrollee;

2 (e) The qualified employee or dependent of the qualified employee gains access to
3 new QHPs as a result of a permanent move;

4 (f) The qualified employee or dependent of the qualified employee demonstrates that
5 the qualified employee or dependent of an employee meets other exceptional
6 circumstances;

7 (g) The qualified employee is an Indian who may change from one QHP to another
8 one time per month;

9 (h) The qualified employee or dependent of the qualified employee loses eligibility
10 for coverage under Medicaid or CHIP; or

11 (i) The qualified employee or dependent of a qualified employee becomes eligible for
12 premium assistance through KHIPP.

13 (2) A qualified employee or dependent of a qualified employee has thirty (30) days
14 from the date of a triggering event described in paragraph (a) through (g) of subsection
15 (1) of this section to select a QHP through the KHBE SHOP.

16 (3) A qualified employee or dependent of a qualified employee has sixty (60) days
17 from the date of a triggering event described in paragraph (h) through (i) of subsection
18 (1) of this section to select a QHP through the KHBE SHOP.

19 (4) A dependent of a qualified employee shall not be eligible for a special enrollment
20 period if a small employer does not offer coverage to a dependent.

21 (5) The effective date of coverage for an enrollment during a special enrollment
22 period shall be in accordance with Section 5(2) of this administrative regulation.

23 (6) Loss of minimum essential coverage includes those circumstances described in

1 26 CFR 54.9801–6(a)(3)(i) through (iii).

2 (7) Loss of minimum essential coverage does not include termination or loss due to:

3 (a) Failure to pay premiums on a timely basis, including COBRA premiums prior to
4 expiration of COBRA coverage, or

5 (b) A situation allowing for a rescission as specified in 45 CFR 147.128.

6 Section 10. Employer Voluntary and Involuntary Termination from KHBE SHOP.

7 (1) (a) A small employer may terminate its participation in KHBE SHOP at any time
8 and for any reason by providing written notice to KHBE.

9 (b) The earliest effective date of termination shall be the last day of the calendar
10 month following the calendar month in which notice is given.

11 (2) An employer may be terminated from participation in KHBE SHOP if the
12 employer:

13 (a) Fails to pay a premium in accordance with Section 4 of this administrative
14 regulation;

15 (b) Fails to meet the employer eligibility requirements established in Section 2 of this
16 administrative regulation; or

17 (c) Commits fraud or misrepresentation related to a material matter addressed in this
18 administrative regulation.

19 Section 11. Reinstatement for Non-Payment of Premiums. (to be developed)

20 Section 12. Materials Incorporated by Reference.

21 (1) The following materials are incorporated by reference:

22 (a) ???wage and tax form????

23 (2) This material may be inspected, copied, or obtained, subject to applicable

- 1 copyright law, at the Office of the Kentucky Health Benefit Exchange, 12 Mill Creek
- 2 Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from
- 3 its Web site at www.healthbenefitexchange.ky.gov.

DRAFT