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Donna Little
REGULATIONS COMPILER

1 Cabinet for Health and Family Services

2 Office of the Kentucky Health Benefit Exchange

3 (New Administrative Regulation)

4 900 KAR 10:050. Individual Agent or Business Entity Participation with the Kentucky

5 Health Benefit Exchange.

6 RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155

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

8 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family

9 Services, Office of the Kentucky Health Benefit Exchange, has responsibility to

10 administer the state-based American Health Benefit Exchange. KRS 194A.050(1)

11 requires the secretary of the cabinet to promulgate administrative regulations necessary

12 to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency

13 of the individual citizens of the Commonwealth; to operate the programs and fulfill the

14 responsibilities vested in the cabinet, and to implement programs mandated by federal

15 law or to qualify for the receipt of federal funds. This administrative regulation

16 establishes the policies and procedures of the Office of the Kentucky Health Benefit

17 Exchange relating to the registration of a business entity or individual agent in

18 accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

19 Section 1. Definitions.

20 (1) "Advanced payment of premium tax credits" or "APTC" means payment of the

21 tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are

1 provided on an advance basis to an eligible individual enrolled in a qualified health plan
2 through an exchange in accordance with section 1412 of the Affordable Care Act.
3 (2) "Agent" means an individual described in KRS 304.9-020(1).
4 (3) "Business entity" is defined by KRS 304.9-020(5).
5 (4) "Certified application counselor" or "CAC" means an individual employed by, or a
6 volunteer of, an entity designated by the Office and the Department for Medicaid
7 Services.
8 (5) "Cost-sharing reductions" or "CSR" means a reduction in cost sharing for an
9 eligible individual enrolled in a silver level plan in an exchange or for an individual who
10 is an Indian enrolled in a qualified health plan in an exchange.
11 (6) "Date of the notice" means the date on the notice plus five (5) calendar days.
12 (7) "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).
13 (8) "Individual market" is defined by KRS 304.17A-005(26).
14 (9) "In-Person Assister" means an entity performing functions described in 45 CFR
15 155.205 selected by the Office of KHBE.
16 (10) "Issuer" is defined by 45 C.F.R. 144.103.
17 (11) "Insurance Affordability Program" means one of the following:
18 (a) A state Medicaid program under title XIX of the Act;
19 (b) A state children's health insurance program (CHIP) under title XXI of the Act;
20 (c) A program that makes coverage in a qualified health plan through the Exchange
21 with advance payments of the premium tax credit established under section 36B of the
22 Internal Revenue Code available to qualified individuals; or
23 (d) A program that makes available coverage in a qualified health plan through the

1 Exchange with cost-sharing reductions established under section 1402 of the Affordable
2 Care Act.
3 (12) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-
4 based exchange conditionally approved by HHS pursuant to 45 C.F.R. 155.105 to offer
5 a QHP beginning January 1, 2014.
6 (13) "Kentucky Insurance Code" means KRS Chapter 304 and associated
7 administrative regulations.
8 (14) "Kentucky Online Gateway" means the system for authentication services for
9 users requesting access to the KHBE portal.
10 (15) "Kynectors" means CACs, In-person assisters, or Navigators.
11 (16) "Navigator" means an entity as described in 45 C.F.R. 155.210 selected by the
12 Office of KHBE.
13 (17) "Office of the Kentucky Health Benefit Exchange" or "Office" or "OKHBE"
14 means the office created to administer the Kentucky Health Benefit Exchange.
15 (18) "Participating Agent" means an agent defined by KRS 304.9-020(1) who has
16 been certified by the Office to participate on the KHBE.
17 (19) "Qualified health plan" or "QHP" means a health plan that meets the standards
18 described in 45 C.F.R. 156 Subpart C and that has in effect a certification issued by the
19 OKHBE.
20 (20) "Qualified employee" means an individual employed by a qualified employer
21 who has been offered health insurance coverage by the qualified employer through the
22 SHOP.
23 (21) "Qualified employer" means an employer that elects to make, at a minimum, all

1 full-time employees of the employer eligible for one (1) or more QHPs in the small group
2 market offered through the SHOP.
3 (22) "Qualified individual" means an individual who has been determined eligible to
4 enroll through the KHBE in a QHP in the individual market.
5 (23) "Small group" is defined by KRS 304.17A-005(42).
6 (24) "Training" means the training established by the Office for individual agents and
7 kynectors.
8 Section 2. Requirements to be a Participating Individual Agent or Business Entity.
9 (1) An individual agent seeking to be a participating agent shall:
10 (a) Be licensed by DOI with a health line of authority;
11 (b) Complete the OKHBE approved agent training in accordance with 45 C.F.R.
12 155.220(d)(2);
13 (c) Sign an individual agent participation agreement;
14 (d) Comply with the privacy and security standards of 45 C.F.R. 155.260;
15 (e) 1. Maintain an appointment with at least two (2) QHP issuers participating on
16 the KHBE; or
17 2. Maintain a designation with a business entity having an appointment with at least
18 two (2) QHP issuers participating on the KHBE; and
19 (f) Register with the KHBE through the Kentucky Online Gateway.
20 (2) A business entity licensed as an agent with a health line of authority seeking to
21 participate with the KHBE shall:
22 (a) Select an individual to serve as the participating business entity representative
23 who shall:

1. Register with KHBE through the Kentucky Online Gateway as the individual authorized by the business entity;

2. Serve as a primary contact for the Office;

3. Ensure that the business entity signs a participation agreement with the Office; and

4. Be responsible for ensuring that only an active Kentucky licensed agent designated with the business entity is provided access to the KHBE through the Kentucky Online Gateway;

(b) Designate the individual agents who shall participate on the KHBE through the participating business entity and who shall:

1. Complete the OKHBE agent training provided by the Office or an approved party;

2. Sign an agent participation agreement;

3. Comply with the privacy and security standards of 45 C.F.R. 155.260; and

4. Register with the KHBE through the Kentucky Online Gateway; and

(c) Maintain an appointment with at least two (2) QHP issuers participating on the KHBE.

Section 3. Permitted Activities of a Participating Individual Agent or Business Entity.

(1) Upon completion of the registration requirements as set forth in Section 2, a participating individual agent or business entity may:

(a) Enroll a qualified individual in any QHP offered through the KHBE in the individual market; or

(b) Assist qualified employers in selecting a QHP and enroll qualified employees in a QHP offered through the KHBE in the small group market; and

1 (c) Assist an individual in applying for advance payments of the premium tax credit
2 and cost-sharing reductions.
3 (2) A qualified individual may be enrolled in a QHP through the KHBE by a
4 participating individual agent or business entity if the participating individual agent or
5 business entity ensures the applicant's completion of an application as described in 42
6 C.F.R. 155.405.
7 (3) A participating individual agent or business entity shall:
8 (a) Disclose to potential applicants any relationships the individual agent or
9 business entity has with QHP issuers, insurance affordability programs, or other
10 potential conflicts of interest identified by the OKHBE; and
11 (b) Not:
12 1. Impose any charge or fee on an applicant for assistance in completing an
13 application or enrolling in a QHP;
14 2. Provide compensation or a referral fee to a kynector; and
15 3. Enter into an exclusive referral agreement with a kynector.
16 (4) If the Office finds noncompliance with the terms and conditions of the individual
17 agent participation agreement, business entity participation agreement, or an
18 administrative regulation of the Office, the Office shall withdraw an agent's or business
19 entities registration and participation with the KHBE after:
20 (a) Giving notice to the participating individual agent or participating business entity;
21 and
22 (b) An opportunity to respond in accordance with Section 5 of this administrative
23 regulation.

1 Section 4. Renewal of Participation and Registration with the OKHBE. To maintain
2 registration with the Office, a participating individual agent or participating business
3 entity shall:
4 (1) Comply with annual training prescribed by the Office;
5 (2) Sign an agent or business entity participation agreement; and
6 (3) Maintain licensure, appointments, and designations as identified in Section 2.
7 Section 5. Withdrawal of Registration and Appeals.
8 (1) (a) Except as provided in subsection (2) of this section, if the Office finds
9 noncompliance with the terms and conditions of an individual agent participation
10 agreement, a business entity participation agreement, or an administrative regulation of
11 the Office, the Office shall:
12 1. Provide the participating individual agent or the participating business entity with
13 notice that the applicable registration shall be withdrawn as of the date of notice;
14 2. Allow the participating individual agent or participating business entity an
15 opportunity to submit evidence of compliance or additional information within ten (10)
16 business days;
17 3. Review any information submitted by the participating individual agent or
18 participating business entity; and
19 4. Based on a review of the information provided, issue a decision to withdraw or
20 reinstate the applicable registration of a participating individual agent or participating
21 business entity; and
22 (b) A participating individual agent or participating business entity shall have the
23 right to appeal a decision to withdraw registration in accordance with subsection (a) of

1 this section through the Office.

2 (2) (a) If the health line of authority or licensure of an agent or business entity is
3 suspended, revoked, or has expired, the OKHBE registration of the agent or business
4 entity shall be withdrawn by the OKHBE based on DOI's administrative action; and

5 (b) Any appeal or request of an action by DOI pursuant to paragraph (a) of this
6 subsection shall be made to DOI in accordance with the Kentucky Insurance Code.

7 (3) After one (1) year following a decision to withdraw the registration of a
8 participating individual agent or participating business entity, the individual agent or
9 business entity may reapply in accordance with Section 2.

900 KAR 10:050

APPROVED:

Carrie Banahan by WJN

Carrie Banahan
Executive Director
Office of the Kentucky Health Benefit Exchange
by William J. Nold

6/25/2013
Date

APPROVED:

Audrey Tayse Haynes

Audrey Tayse Haynes
Secretary
Cabinet for Health and Family Services

7/3/13
Date

900 KAR 10:050

PUBLIC HEARING AND PUBLIC COMMENTS:

A public hearing on this administrative regulation shall, if requested, be held on August 21, 2013, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2013, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 3, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40621, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Administrative Regulation Number: 900 KAR 10:050
Contact Person: Carrie Banahan (502) 564-7940

1. Provide a brief summary of:

   (a) What this administrative regulation does: This administrative regulation establishes the policies and procedures of the Office of the Kentucky Health Benefit Exchange relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

   (b) The necessity of this administrative regulation: This administrative regulation is necessary to inform individual agents and business entities of the registration requirements for participation on the Kentucky Health Benefit Exchange.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to provide the registration requirements for individual agents and business entities seeking to participate on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed information about the registration requirements for individual agents or business entities seeking to participate on the Kentucky Health Benefit Exchange to comply with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:

   (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

   (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

   (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

   (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 7,500 individual agents and/or business entities that may request to be registered to participate on the Kentucky Health Benefit Exchange.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

   (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual agent or business entity will be licensed by DOI, complete OKHBE training, sign a participation agreement, meet privacy and security standards, register with KHBE through the Kentucky Online Gateway, and maintain an appointment with at least 2 QHP issuers participating on the KHBE.

   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the individual agent or business entity for participation on the KHBE.

   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual agent or business entity that seeks to participate on the Kentucky Health Benefit by providing detailed instructions regarding the registration requirements.

5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

   (a) Initially: No additional costs will be incurred to implement this administrative regulation.

   (b) On a continuing basis: No additional costs will be incurred.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

9. TIERING: Is tiering applied? (Explain why or why not)
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 900 KAR 10:050
Contact Person: Carrie Banahan
Phone number: 502-564-7940

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of the Kentucky Health Benefit Exchange within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. § 18031, and 45 C.F.R. Part 155.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 900 KAR 10:050
Contact Person: Carrie Banahan, 564-7940

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Part 155.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures of the Office of the Kentucky Health Benefit Exchange relating to the registration of a business entity or individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a Qualified Health Plan (QHP) in Kentucky beginning January 1, 2014. An Exchange must make qualified health plans available to qualified individuals and qualified employers. At a minimum, an Exchange must implement procedures for participation of individual agents and business entities seeking to participate on the Exchange. This registration may be done if the individual agent or business entity is licensed by DOI, completes OKHBE training, signs a participation agreement, meets privacy and security standards, registers with KHBE through the Kentucky Online Gateway, and maintains an appointment with at least 2 QHP issuers participating on the KHBE.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements than those required by the federal mandate.