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MATTHEW G. BEVIN
GOVERNOR

EXECUTIVE ORDER

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Allen

Secretary of State
Frankfort
Kentucky

2017-269
May 1, 2017

RELATING TO ESTABLISHMENT AND OPERATION OF
THE KENTUCKY OFFICE OF HEALTH BENEFIT EXCHANGE

WHEREAS, the Patient Protection and Affordable Care Act (P.L. 111-148) as amended by the Health Care and Education Reconciliation Act (P.L. 111-152) (hereinafter the "Affordable Care Act") and the regulations promulgated thereunder require the establishment of a Health Benefit Exchange (the "Exchange") to facilitate the purchase of individual and small business health insurance coverage; and

WHEREAS, the regulations require the Exchange to fulfill the purposes of:

1. Facilitating the purchase and sale of qualified health plans in the individual market;
2. Assisting qualified small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market;
3. Providing access for eligible individuals to enroll in qualified health plans offered through the Exchange or coverage redirecting to other federal or state health care programs including Medicaid and KCHIP;
4. Enabling eligible individuals to receive premium tax credits and cost-sharing reductions and eligible small businesses to receive tax credits;
5. Making health coverage available to citizens who apply and qualify for such coverage; and

WHEREAS, the Commonwealth of Kentucky elected to create a State-based Exchange known as "kynect" to fulfill requirements of the Affordable Care Act; and

WHEREAS, the operation of kynect in Kentucky was funded entirely with federal funds until May 1, 2015, at which time the funding of operations of kynect was to be wholly

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funded from revenues generated by and through the Exchange; and

WHEREAS, the operation of kynect in Kentucky is no longer eligible for federal funding for operations, and

WHEREAS, Kentucky has elected and transitioned, with the approval of The Centers for Medicare & Medicaid and The Center for Consumer Information & Insurance Oversight, to an Exchange as a State Based Model on the Federal Platform, using healthcare.gov, to facilitate the purchase of individual and small business health insurance coverage; and

WHEREAS, Kentucky's Exchange, using healthcare.gov as its Internet portal, will operate more efficiently and effectively and will achieve substantial financial savings from this Exchange model; and

WHEREAS, the Cabinet for Health and Family Services is charged with the improvement of the health of all Kentuckians, and is to do so in a financially prudent and sustainable manner; and

WHEREAS, Kentucky Access was created in 2001 to "ensure that health coverage is made available to each Kentucky individual applying and qualifying for coverage" as provided in KRS 304.17B-005 and to be managed and operate independent of the insurance regulatory agency; and

WHEREAS, the restructured operations of the Exchange as a State Based Model on the Federal Platform, healthcare.gov, with the coordination and approval by The Centers for Medicare & Medicaid Services and its subdivision, The Center for Consumer Information & Insurance Oversight, is compliant with federal law; and

WHEREAS, it has been determined that a reorganization of governmental operations is necessary to promote access to health insurance and benefit products to consumers within the

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Commonwealth of Kentucky; and

WHEREAS, a change in organizational structure will promote greater economy and efficiency, improve administration, and better align with current initiatives:

NOW, THEREFORE, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Constitution of the Commonwealth of Kentucky and KRS 12.028, do hereby Order and Direct as follows:

- I. The Cabinet for Health and Family Services shall have the following changes in organizational structure:
 - A. The Kentucky Office of Health Benefit Exchange is hereby established within the Cabinet for Health and Family Services and shall be headed by an executive director to be appointed by the Governor. The Office shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services and set forth by administrative order.
 1. The Division of Health Care Policy, Education, and Outreach is hereby established within the Kentucky Office of Health Benefit Exchange and shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services and set forth by administrative order.
 2. The Division of Operations, Administration and Kentucky Access is hereby established within the Kentucky Office of Health Benefit Exchange and shall be headed by a director appointed by the Secretary of the Cabinet for Health and Family Services pursuant to KRS 12.050. The Division shall be composed of such organizational entities as deemed appropriate by the Secretary of the Cabinet for Health and Family Services and set forth by administrative order.
 - B. The Kentucky Health Care Improvement Authority currently established under Chapter 304-17B of the Kentucky Revised Statutes as an organizational unit, and as an administrative body attached to the Department of Insurance within the Public Protection Cabinet, is hereby abolished and recreated as an entity

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attached to the Cabinet for Health and Family Services for administrative purposes.

- II. The Kentucky Office of Health Benefit Exchange shall:
 - A. Facilitate enrollment in health coverage and the purchase and sale of qualified health plans in the individual market.
 - B. Facilitate the ability of eligible individuals to receive premium tax credits and cost-sharing reductions and to enable eligible small businesses to receive tax credits, in compliance with all applicable federal and state laws and regulations.
 - C. Enter into contracts and other agreements, as necessary, with appropriate entities, including but not limited to federal, state, and local agencies, as described in 45 CFR §155.110, to the extent necessary to carry out its duties and responsibilities, provided that such agreements incorporate adequate protections with respect to the confidentiality of any information to be shared.
 - D. At a minimum, carry out the functions and responsibilities required under § 1311 of the Affordable Care Act to implement and comply with federal regulations issued under § 1321(a) of the Affordable Care Act.
 - E. Pursue all available federal funding for further development and operation of the Kentucky Office of Health Benefit Exchange.
 - F. Have the authority to promulgate administrative regulations in accordance with KRS 13A, as necessary to carry out the duties and responsibilities of the Exchange.
 - G. Regularly consult with stakeholders on an on-going basis as referenced in 45 CFR §155.130.
 - H. Perform Issuer Plan Management activities, including Qualified Health Plan certification, Qualified Health Plan monitoring and oversight, issuer account management, plan recertification and decertification.
 - I. Any and all other duties, responsibilities and functions authorized by federal and state law or necessary to implement the requirements of this Exchange model.
- III. The Kentucky Office of Health Benefit Exchange may establish advisory sub-committee(s) consisting of consumers and other stakeholder groups or interested

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parties to study specific policy issues and advise the Kentucky Office of Health Benefit Exchange.

- IV. 45 CFR §155.110 requires that all entities that operate a Health Benefit Exchange must have in place and make publicly available a set of guiding governance principles that include ethics, conflict of interest standards, accountability and transparency standards, and disclosure of financial interests. As a state agency, the Kentucky Office of Health Benefit Exchange is subject to, inter alia:
- a. The Kentucky Open Records Act, KRS 61.870 to 61.884;
 - b. The Kentucky Open Meetings Law, KRS 61.800 to 61.850;
 - c. The Kentucky Model Procurement Code, KRS 45A; and
 - d. The Kentucky Executive Branch Code of Ethics, KRS 11A

Which provisions shall satisfy the aforementioned requirement for guiding governance principles.

- V. The Public Protection Cabinet shall have the following changes in organizational structure:
- A. The Division of Kentucky Access within the Department of Insurance is hereby abolished and recreated as an entity attached to the Cabinet for Health and Family Services. All personnel, records, files, equipment, and funds are hereby transferred to the Division of Operations, Administration and Kentucky Access within the Kentucky Office of Health Benefit Exchange within the Cabinet for Health and Family Services.
 - B. The Kentucky Health Care Improvement Authority currently attached to the Department of Insurance within the Public Protection Cabinet is hereby abolished and recreated as an entity attached to the Cabinet for Health and Family Services. All duties, functions, responsibilities, records, equipment, staff and supporting budgets of the Kentucky Health Care Improvement Authority as it previously existed, and all functions, rights, powers, duties and obligations as set forth in KRS Chapter 304-17B and other relevant provisions of law, are hereby transferred to the Cabinet for Health and Family Services.
- VI. Nothing in this Order shall be construed to duplicate, preempt, supersede, limit or otherwise restrict the statutory authority, duties and functions of the Department for

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Medicaid Services and the Kentucky Department of Insurance and the administrative regulations promulgated thereunder, except as provided for herein.

- VII. The Cabinet for Health and Family Services, the Public Protection Cabinet, the Finance and Administration Cabinet, the Office of State Budget Director, and the Personnel Cabinet shall take all necessary actions to effectuate this order to the extent of any conflict.



MATTHEW G. BEVIN, Governor
Commonwealth of Kentucky



ALISON LUNDERGAN GRIMES
Secretary of State

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REORGANIZATION PLAN

INTRODUCTION

The Cabinet for Health & Family Services ("Cabinet") is seeking to create an office for the ongoing operations of the Kentucky Health Benefit Exchange in order to promote and achieve greater economy, efficiency, improve coordination, and better align organizational structure to current initiatives.

SUMMARY OF THE PLAN

As a result of the Patient Protection and Affordable Care Act, effective January 1, 2014, Kentucky established a Kentucky Health Benefit Exchange (the "Exchange"). Individuals and small businesses can use the Exchange to purchase health insurance from a choice of products offered by qualified health plans. The Exchange ensures that participating health plans meet certain standards. Individuals and families purchasing health insurance through an Exchange may qualify for premium tax credits and reduced cost-sharing if their household income is between 138 and 400 percent of the Federal poverty level. The Exchange also coordinates eligibility and enrollment with the State Medicaid and Children's Health Insurance Programs (CHIP) to ensure individuals eligible for those programs have affordable health coverage.

The Cabinet for Health and Family Services was designated the lead for the Kentucky Exchange due to the large number of health-related programs housed within the cabinet.

During 2016, the Exchange successfully transitioned to a State Based Model on the Federal Platform Exchange, meaning the primary enrollment and eligibility portal moved from kynect to Healthcare.gov. With this transition completed January 1, 2017, the Exchange retained certain responsibilities and obligations to operate the Exchange as a State Based Model.

In order to manage efficiently and effectively Kentucky's ongoing responsibilities as a State Based Model on the Federal Platform of healthcare.gov, the Kentucky Office of Health Benefit Exchange (KOHBE) is created to align with those obligations. The Office will function as a separate appropriation and organizational unit of the Cabinet, reporting directly to the Secretary of the Cabinet.

In order to promote efficiency, economy and improve administration, the Division of Kentucky Access and the Kentucky Health Care Improvement Authority are abolished within the Public Protection Cabinet, Department of Insurance, and established within the Cabinet for Health and Family Services. The goals of these organizational units correspond with the goals of the KOHBE. Therefore, Kentucky Access will be a part of the Division

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of Operations, Administration and Kentucky Access and the Kentucky Health Care Improvement Authority will be attached to the Office of the Secretary for administrative purposes.

In order to promote efficiency, economy and improve administration for these functions, KOHBE is reorganized into the following described Divisions.

The Division of Health Care Policy, Education and Outreach is established within the Kentucky Office of Health Benefit Exchange. The Division is responsible for certification of qualified health plans, overseeing legislative and regulatory efforts related to the Exchange and for consumer assistance and outreach efforts related to the Exchange. Additionally, this Division will coordinate activities related to the Exchange's participation on the Federal Platform and using healthcare.gov as its portal for Qualified Health Plan enrollment.

The Division of Operations, Administration and Kentucky Access is established within the Kentucky Office of Health Benefit Exchange. This Division is responsible for overall operations, purchasing, budgets, contracting and the Small Business Health Options Program. Also, this Division is responsible for all activities related to the Kentucky Access program, as reflected in KRS 304.17B.

PERSONNEL AND FISCAL IMPACTS

There will be personnel impacts for this reorganization; however, these impacts will create operational and programmatic efficiencies to reduce operational costs. The Office will be headed by an executive director and the organizational structure will consist of two divisions. Additional positions will be established within the personnel cap and budget.

NET EFFECT

The organizational enhancements being made to the Cabinet are designed to improve efficiency and appropriately satisfy State and federal requirements for an Exchange that is a State Based Model on the Federal Platform Exchange.