



MATTHEW G. BEVIN
GOVERNOR

EXECUTIVE ORDER

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

Secretary of State
Frankfort
Kentucky

2016-496
July 1, 2016

RELATING TO ESTABLISHMENT AND OPERATION
OF THE KENTUCKY OFFICE OF HEALTH BENEFIT
AND INFORMATION 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") for every state in America to facilitate the purchase of health insurance coverage and provide for the establishment of a Small Business Health Options Program; 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 through 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 is far from being wholly funded from revenues generated by and through the Exchange; and

WHEREAS, the Commonwealth can transition from the use of the kynect webportal and related IT operations to the already available federal platform known as healthcare.gov and achieve substantial financial savings; and

WHEREAS, the Commonwealth, working collaboratively with the U.S. Department of Health and Human Services, has begun the transition from using the state “kynect” portal to the “healthcare.gov” portal; 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

WHEREAS, the previous administration created kynect via executive order based upon the premise that the statutory purpose of Kentucky Access is closely related to the statutory mission and responsibilities of the Cabinet for Health and Family Services and the purposes of a Health Benefit Exchange; and

WHEREAS, continued operations of the kynect Exchange is necessary to be compliant with federal law, until such time as the transition to the Federal platform, healthcare.gov, is complete; and

WHEREAS, the Commonwealth of Kentucky has a continued interest in continuing



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to enhance and create a health information exchange to improve patient care coordination; and

WHEREAS, it has been determined that a reorganization of governmental operations is necessary to continue providing access to health insurance and benefit products as required by federal law; and

WHEREAS, a change in organizational structure will promote greater economy, 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 and Information 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 Administration is hereby established within the Kentucky Office of Health Benefit and Information 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 Financial and Operations Administration is hereby established within the Kentucky Office of Health Benefit and Information 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.
 3. The Division of Education, Outreach and Transition Activities is hereby established within the Kentucky Office of Health Benefit and Information 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



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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.

4. The Division of Kentucky Access and Quality Assurance is hereby established within the Kentucky Office of Health Benefit and Information 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.
 5. The Division of Kentucky Electronic Health Information is hereby established within the Kentucky Office of Health Benefit and Information 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 administrative body attached to the Department of Insurance, is hereby abolished and recreated as an agency attached to the Cabinet for Health and Family Services for administrative purposes.
- II. The Kentucky Office of Health Benefit and Information Exchange shall:
- A. Facilitate enrollment in health coverage and the purchase and sale of qualified health plans in the individual market.
 - B. Take such actions as are necessary to enable 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. Coordinate initiatives related to the use of electronic health information technology on behalf of the Commonwealth including the Kentucky Office of Health Benefit and Information Exchange.
 - D. 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.



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- E. 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.
 - F. Pursue all available federal funding for development and operation of the Kentucky Office of Health Benefit and Information Exchange.
 - G. Have the authority to promulgate administrative regulations in accordance with KRS 13A, as necessary to carry out the duties and responsibilities of the Exchange.
 - H. Regularly consult with stakeholders on an on-going basis as referenced in 45 CFR §155.130.
- III. The Kentucky Office of Health Benefit and Information Exchange shall not establish procedures or rules that conflict with or prevent the application of the Affordable Care Act.
- IV. The Kentucky Health Benefit and Information Exchange Advisory Board is hereby created and attached to the Cabinet for Health and Family Services for administrative purposes. The Kentucky Office of Health Benefit and Information Exchange shall review and discuss issues with the Kentucky Health Benefit and Information Exchange Advisory Board.
- A. The Health Insurance Advisory Council established and attached to the Kentucky Department of Insurance, Public Protection Cabinet is hereby merged with the Kentucky Health Benefit and Information Exchange Advisory Board. All duties, functions, responsibilities, records, equipment, staff and supporting budgets of the Health Insurance Advisory Council as it previously existed, and all functions, rights, powers, duties and obligations as set forth in KRS 304.17A-080 and other relevant provisions of law, are hereby transferred to the newly created and established Kentucky Health Benefit and Information Exchange Advisory Board administratively attached to the Kentucky Office of Health Benefit and Information Exchange.
 - B. The Kentucky Health Benefit and Information Exchange Advisory Board shall be appointed by the Governor and composed of the following twenty-one (21) members that have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured.
 - 1. Secretary of the Cabinet for Health and Family Services or the Secretary's designee;
 - 2. Commissioner of the Department for Medicaid Services or the Commissioner's designee;



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3. Commissioner of the Department of Insurance or the Commissioner's designee;
4. Commissioner of the Department for Behavioral Health and Developmental and Intellectual Disabilities or the Commissioner's designee;
5. Three (3) representatives of insurers with a health line of authority and that offers health benefit plans in the Commonwealth;
6. One (1) representative of insurance agents licensed to sell health insurance in the Commonwealth;
7. Three (3) representatives for non-facility based health care providers licensed in the Commonwealth;
8. Three (3) representatives for facility based health care providers licensed in the Commonwealth;
9. One (1) representative of small employers doing business in the Commonwealth;
10. One (1) representative of an individual purchaser of health benefit plans in the Commonwealth; and
11. Five (5) consumer representatives, navigators, or in-person assisters.

All members other than those who serve by virtue of their offices shall be selected by the Governor from a list of names submitted by any interested parties. The Governor may request the submission of additional names.

- V. The Governor shall appoint a Chair for the Kentucky Health Benefit and Information Exchange Advisory Board.
- VI. Membership on the Kentucky Health Benefit and Information Exchange Advisory Board representing non-state agencies shall initially be for a staggered term limit for a two (2) or three (3) year period as designated by the Governor to ensure that experienced members are maintained on the Kentucky Health Benefit and Information Exchange Advisory Board at all times.
- VII. The Kentucky Health Benefit and Information Exchange Advisory Board may establish advisory sub-committee(s) consisting of consumers and other stakeholder groups or interested parties to study specific policy issues and advise the Advisory Board.
- VIII. The Governor's Office of Electronic Health Information, within the Office of the Secretary, is hereby abolished. All personnel, records, files, equipment, and funds are hereby transferred to the Division of Kentucky Electronic Health Information within the Kentucky Office of Health Benefit and Information Exchange.



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- IX. 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 and Information 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.
- X. 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. All personnel, records, files, equipment, and funds are hereby transferred to the Division of Kentucky Access and Quality Assurance within the Kentucky Office of Health Benefit and Information Exchange within the Cabinet for Health and Family Services.
 - B. The Kentucky Health Care Improvement Authority currently attached to the Department of Insurance, is hereby abolished and recreated as an agency 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.
- XI. 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 Medicaid Services and the Kentucky Department of Insurance and the administrative regulations promulgated thereunder, except as provided for herein.
- XII. 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.




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MATTHEW G. BEVIN, Governor
Commonwealth of Kentucky


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REORGANIZATION PLAN

INTRODUCTION

The Cabinet for Health & Family Services (CHFS) is seeking to create an office for the ongoing operations of the Kentucky Health Benefit Exchange and the Kentucky Health Information 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 (HBE). 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 HBE due to the large number of health-related programs housed within the cabinet.

The Governor's Office of Electronic Health Information (GOEHI), created by Executive Order in 2009, is also housed within the Cabinet. GOEHI has developed the Kentucky's Health Information Exchange and coordinates and works with health care providers throughout the Commonwealth in guiding implementation of electronic health information technology in the Commonwealth.

In order to continue to manage day-to-day work and the increased activity levels of both the health benefit and health information exchanges, the Kentucky Office of Health Benefit and Information Exchange (KOHBIIE) is being created. 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 for Insurance, and established within the Cabinet for Health and Family Services. The goals of these organizational units correspond with the goals of KOHBIIE. Therefore, the Division of Kentucky Access and Quality Assurance will be established within KOHBIIE. And, the Kentucky Health Care Improvement Authority will be attached to the Office of the Secretary for administrative purposes.

The Division of Health Care Policy Administration is established within the Kentucky Office of Health Benefit and Information Exchange. The Division is responsible for



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certification of qualified health plans, overseeing legislative and regulatory efforts related to the Exchange.

The Division of Financial and Operations Administration is established within the Kentucky Office of Health Benefit and Information Exchange. The Division administers purchases, budgets, contracts and the Small Business Health Options Program.

The Division of Education, Outreach and Transition Activities is established within the Kentucky Office of Health Benefit and Information Exchange. The Division is responsible for consumer assistance efforts related to the Exchange, as well activities related to the HBE's transition from the use of kynect to healthcare.gov as its portal for QHP enrollment.

The Division of Kentucky Access and Quality Assurance is established within the Kentucky Office of Health Benefit and Information Exchange. The Division administers health plans, which provides medical coverage to individuals who have difficulty in obtaining health insurance in the individual insurance market due to high cost conditions.

The Governor's Office of Electronic Health Information is abolished. The Division of Kentucky Electronic Health Information is established within the Kentucky Office of Health Benefit and Information Exchange. The Division of Kentucky Electronic Health Information oversees the enrollment and participation in the Kentucky Health Information Exchange whose focus is to improve the health, quality and safety of healthcare for Kentucky's residents and visitors through the provision of a statewide, interoperable health information exchange.

Finally, the Kentucky Health Benefit Exchange Advisory Board will be created and be attached to CHFS/KOHBIE for administrative purposes. The duties of the Health Insurance Advisory Council established and attached to the Kentucky Department of Insurance, Public Protection Cabinet will be merged with the new Kentucky Health Benefit Exchange Advisory Board.

PERSONNEL AND FISCAL IMPACTS

There will be personnel impacts for this reorganization; however, these impacts will be budget neutral based on existing funding. The Office will be headed by an executive director and the organizational structure will consist of five divisions. Additional positions will be established within the departmental personnel cap and budget.

NET EFFECT

The organizational enhancements being made to the Cabinet are designed to improve efficiency and appropriately satisfy the requirements of federal requirements while remaining budget neutral.