



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

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

Secretary of State
Frankfort
Kentucky

2014-561
June 30, 2014

**RELATING TO ESTABLISHMENT AND OPERATION OF
THE OFFICE OF THE KENTUCKY 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 there under require the establishment of an American Health Benefit 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 an 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 one-stop shopping by helping eligible individuals 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, on June 28, 2012, the United States Supreme Court affirmed the constitutionality of such portions of the Affordable Care Act requiring the establishment of an Exchange for every state; and

WHEREAS, pursuant to Affordable Care Act § 1321(c), if a state does not establish its own Exchange, the United States Department of Health and Human Services ("HHS") shall



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establish and operate such Exchange within the state; and

WHEREAS, interest groups representing employers, health insurers, insurance agents, health care providers and health care advocates support a state established Exchange; and

WHEREAS, the Commonwealth of Kentucky elected to create a State-based Exchange, known as “kynect”, to:

1. Operate an Exchange within Kentucky’s commercial insurance market;
2. Consider the unique regional and economic needs of the Commonwealth’s individual and small business health insurance markets;
3. Account for and understand the diversity of its population;
4. Ensure coordination and integration of eligibility determinations and enrollment with the state Medicaid program;
5. Develop cooperative working relationships with insurers, agents, advocates, health care providers, and other business partners; and
6. Determine the benefits provided to enrollees in the Exchange, the criteria to participate in the Exchange, the rules for marketing products, and the operations of the Small Business Health Options Program (“SHOP”); and

WHEREAS, operation of kynect in Kentucky will be funded entirely with federal funds until January 1, 2015, at which time its operations will be wholly funded from revenues generated by and through the Exchange; and

WHEREAS, the U. S. Department of Health and Human Services approved Kentucky’s State-based Exchange to provide affordable, quality coverage for consumers and small businesses effective January 1, 2014; and

WHEREAS, as of May 2014, more than 421,000 Kentuckians have enrolled in health care coverage through kynect, many obtaining affordable health coverage for the first time or



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only through Kentucky Access; and

WHEREAS, kynect has been hailed as a national model since its launch on October 1, 2013, and

WHEREAS, the Cabinet for Health and Family Services is charged with the improvement of the health of all Kentuckians, and securing all available resources to do so; 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 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 an American Health Benefit Exchange; and

WHEREAS, the Kentucky Health Information Exchange has received national recognition for the development and implementation of a statewide health information exchange designed to improve patient care coordination; and

WHEREAS, the Commonwealth of Kentucky has always promoted effective and efficient management of state government operations and resources; and

WHEREAS, it has been determined that a reorganization of governmental operations is necessary and desirable in order to better promote access to health coverage and align health resources:

NOW, THEREFORE, I, Steven L. Beshear, 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:



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- I. The Cabinet for Health and Family Services shall have the following changes in organizational structure:
 - a. The Kentucky Office of Health Benefit and Health 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.
 - b. The Division of Health Care Policy Administration is hereby established within the Office of Health Benefit and Health 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.
 - c. The Division of Financial and Operations Administration is hereby established within the Office of Health Benefit and Health 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.
 - d. The Division of Education and Outreach is hereby established within the Office of Health Benefit and Health 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.
 - e. The Division of Kentucky Access is hereby established within the Office of Health Benefit and Health 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.
 - f. The Division of Kentucky Electronic Health Information is hereby established within the Office of Health Benefit and Health Information Exchange and



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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.

- g. The Kentucky Health Care Improvement Authority is hereby established under Chapter 304-17B of the Kentucky Revised Statutes as an administrative body attached to the Cabinet for Health and Family Services for administrative purposes.

II. The Office of Health Benefit and Health 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 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 Office of Health Benefit and Health 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.
- 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 Office of Health Benefit and Health 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 Office of Health Benefit and Health Information Exchange.
- h. Regularly consult with stakeholders on an on-going basis as referenced in 45 CFR §155.130.



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- III. The Office of Health Benefit and Health Information Exchange shall not establish procedures or rules that conflict with or prevent the application of the Affordable Care Act.
- IV. The kynect Advisory Board is hereby created and attached to the Cabinet for Health and Family Services for administrative purposes. The Office of Health Benefit and Health Information Exchange shall review and discuss issues with the kynect Advisory Board. The kynect Advisory Board shall be appointed by the Governor and composed of the following nineteen (19) 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.
 - a. Commissioner of the Department for Medicaid Services or the Commissioner's designee;
 - b. Commissioner of the Department of Insurance or the Commissioner's designee;
 - c. Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities or the Commissioner's designee;
 - d. Three (3) representatives of insurers with a health line of authority and that offers health benefit plans in the Commonwealth;
 - e. One (1) representative of insurance agents licensed to sell health insurance in the Commonwealth;
 - f. Three (3) representatives for non-facility based health care providers licensed in the Commonwealth;
 - g. Four (4) representatives for facility based health care providers licensed in the Commonwealth;
 - h. One (1) representative of small employers doing business in the Commonwealth;
 - i. One (1) representative of an individual purchaser of health benefit plans in the Commonwealth; and
 - j. Three (3) consumer representatives.



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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 kynect Advisory Board.
- VI. Membership on the kynect Advisory Board representing non-state agencies shall initially be for a staggered term limit for two (2) or three (3) year period as designated by the Governor to ensure that experienced members are maintained on the kynect Advisory Board at all times.
- VII. The kynect 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 kynect 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 Office of Health Benefit and Health Information Exchange.
- 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 Office of Health Benefit and Health 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 within the Office of Health Benefit and Health Information Exchange within the Cabinet for Health and Family Services.
 - b. The Kentucky Health Care Improvement Authority established and attached to the Department of Insurance, is hereby abolished. All duties, functions, responsibilities, records, equipment, staff and supporting budgets of the Kentucky Health Care Improvement Authority as it previously existed, and all



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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 Kentucky Health Care Improvement Authority administratively attached to the Office of the Secretary within 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.

This Order shall be effective July 1, 2014.


STEVEN L. BESHEAR, GOVERNOR
Commonwealth of Kentucky


ALISON LUNDERGAN GRIMES
Secretary of State

REORGANIZATION PLAN

INTRODUCTION

The Cabinet for Health & Family Services (CHFS) is seeking to create an office for the ongoing operations of the Health Benefit Exchange (KHBE) and the Kentucky Health Information Exchange.

SUMMARY OF THE PLAN

As a result of the Patient Protection and Affordable Care Act, effective January 1, 2014, individuals now have access to health coverage through the newly established Kentucky Health Benefit Exchange (HBE). Individuals and small businesses can use the Exchange to purchase affordable health insurance from a choice of products offered by qualified health plans. The Exchange ensures that participating health plans meet certain standards and facilitate competition and choices by rating health plans' quality. 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 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 Health Information Exchange 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, 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 Division of Kentucky Access will be established within the Kentucky Office of Health Benefit and Information Exchange. The goals of these organizational units correspond with the goals of the Kentucky Office of the Health Benefit and Information Exchange. The Health Care Improvement Authority will be attached to the Office of the Secretary for administrative purposes.

The Governor's Office of Electronic Health Information is abolished. The Division of Kentucky Electronic Health Information is established.

PERSONNEL AND FISCAL IMPACTS

There will be personnel impacts for this reorganization. However, these 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 the federal grants while remaining budget neutral.