CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(Amended at ARRS Committee)

900 KAR 10:120. KHBE eligibility and enrollment in a qualified health plan, SHOP, and SHOP Formal Resolution Process.

RELATES TO: KRS Chapter 304, 304.14-110, 304.17A-243, 304.17A-245, 25 U.S.C.1603(13), 26 U.S.C. 36B(b)(3)(A), 26 U.S.C. 5000A, 6011, 6012, 9831, 42 U.S.C 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 435.603(e), 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. 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. This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market, the operation of a Small Business Health Options Program, and the formal review process related to SHOP on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Eligibility and Enrollment.

(1) An applicant shall be eligible to enroll in a Qualified Health Plan or QHP through the Kentucky Health Benefit Exchange or KHBE if the applicant:

(a)

1. Is a citizen or national of the United States;

2. Is a non-citizen who is lawfully present in the United States and is reasonably expected to become a citizen or national; or

3. Is a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(b) Except for an incarceration pending a disposition of a charge, is not incarcerated; and

(c) Meets a residency requirement in 45 C.F.R. 155.305(a)(3).

(2) An applicant:

(a) May apply for a determination of eligibility at any time during a year; and

(b) Shall only enroll during open enrollment or Special Enrollment Periods or SEPs.

(3) An applicant determined eligible for enrollment in a QHP as set forth in subsection (1) of this section shall be eligible to enroll in a QHP during:

(a) An open enrollment period as established in Section 5(2) of this administrative regulation; or

(b) A SEP as established in Sections 5(4) and 6 of this administrative regulation.

(4) An applicant shall attest to whether or not information affecting the applicant's eligibility has changed since the most recent eligibility determination if the applicant:

(a) Was determined eligible to enroll in a QHP, but:

1. Did not select a QHP within the applicable enrollment period as set forth in Section 5 or 6 of this administrative regulation; or

2. Was not eligible for an enrollment period; and

(b) Seeks a new enrollment period prior to the date on which the applicant's eligibility is redetermined as established in Section 8 of this administrative regulation.

(5) An applicant shall submit an application for enrollment in a QHP:

(a) Via the Web site at www.kynect.ky.gov;

(b) By telephone;

(c) By mail; or

(d) In person.

(6)

(a) An applicant who has a Social Security number shall provide the number to the KHBE.

(b) An individual who is not seeking coverage for himself or herself shall not provide a Social Security number, except as established by Section 2(8) of this administrative regulation.

(7) In accordance with 45 C.F.R. 155.310(a)(2), an individual shall not provide information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself.

(8)

(a) Except as established by paragraph (b) of this subsection, an applicant who requests an eligibility determination for an insurance affordability program shall have an eligibility determination for all insurance affordability programs.

(b) An applicant who requests an eligibility determination for a QHP only shall not have an eligibility determination for an insurance affordability program.

(9) An applicant shall not provide information beyond the minimum amount necessary to determine eligibility and enrollment through the KHBE.

Section 2. Eligibility Standards for Advanced Payments of the Premium Tax Credit.

(1) A tax filer shall be eligible for Advanced Payments of the Premium Tax Credit or APTC if:

(a) The tax filer is expected to have a household income as prescribed in 45 C.F.R. 155.305(f)(1)(i) for the benefit year for which coverage is requested; and

(b) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year:

1. Meets the requirements for eligibility for enrollment in a QHP through the KHBE as established by Section 1 of this administrative regulation; and

2. Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-2(a)(2) and (c).

(2) A tax filer who is a non-citizen and lawfully present and ineligible for Medicaid for reason of immigration status shall be eligible for APTC if:

(a) The tax filer meets the requirement in subsection (1)(b) of this section;

(b) The tax filer is expected to have a household income of less than 100 percent of the Federal Poverty Level or FPL for the benefit year for which coverage is requested; and

(c) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year is:

1. A non-citizen who is lawfully present; and

2. Not eligible for Medicaid for reason of immigration status.

(3) A tax filer shall attest that one (1) or more applicants for whom the tax filer attests that a personal exemption deduction for the benefit year shall be claimed is enrolled in a QHP that is not a catastrophic plan.

(4) A tax filer shall not be eligible for APTC if the U.S. Department of Health and Human Services or HHS notifies the KHBE that APTCs were made on behalf of the tax filer or tax filer's spouse for a year in accordance with 45 C.F.R. 155.305(f)(4).

(5) An APTC amount shall be:

(a) Calculated in accordance with 26 C.F.R. 1.36B-3; and

(b) Allocated between QHPs and stand-alone dental policies in accordance with 45 C.F.R. 155.340(e).

(6) An applicant for APTC may accept less than the full amount of APTC for which the applicant is determined eligible.

(7) An APTC shall be authorized by the KHBE on behalf of a tax filer only if the KHBE obtains necessary attestations from the tax filer that:

(a) The tax filer shall file an income tax return for the benefit year in accordance with 26 U.S.C. 6011 and 6012;

(b) If the tax filer is married, a joint tax return shall be filed for the benefit year;

(c) Another taxpayer shall not be able to claim the tax filer as a dependent for the benefit year; and

(d) The tax filer shall claim a personal exemption deduction on the tax filer's return for the applicants identified as members of the tax filer's family, including the tax filer and the spouse of the tax filer, in accordance with 45 C.F.R. 155.305(f)(4).

(8) An application filer who is not an applicant shall provide the Social Security number of a tax filer only if the applicant attests that the tax filer:

(a) Has a Social Security number; and

(b) Filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(9) The effective date for APTC shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 155.335(i), as applicable.

(10) An employer may be notified of an employee's eligibility for APTC in accordance with 45 C.F.R. 155.310 (h).

Section 3. Eligibility Standards for Cost Sharing Reductions.

(1) An applicant shall be eligible for Cost Sharing Reductions or CSRs if the applicant:

(a) Meets the eligibility requirements for enrollment in a QHP as set forth in Section 1 of this administrative regulation;

(b) Meets the requirements for APTC as set forth in Section 2 of this administrative regulation;

(c) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 155.305(g)(1)(i)(C) for the benefit year for which coverage is requested; and

(d) Except for an enrollee who is an Indian, enrolls in a silver level QHP through the KHBE.

(2) An eligibility determination for CSRs shall be based on the categories as described in 45 C.F.R. 155.305(g)(2).

(3) If two (2) or more individuals enrolled in the individual market under a single policy would be eligible for different cost sharing amounts if enrolled in separate policies, the individuals under the single policy shall be found by the KHBE to be collectively eligible only for the last category listed in 45 C.F.R. 155.305(g)(3) for which all the individuals covered by the policy would be eligible.

(4) The effective date for CSRs shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 45 C.F.R. 155.335(i), as applicable.

(5) An employer shall be notified of an employee's eligibility for CSRs in accordance with 45 C.F.R. 155.310(h).

Section 4. Verification Processes.

(1) Verification of eligibility for an applicant seeking enrollment in a QHP shall be performed in accordance with:

(a) 45 C.F.R. 155.315; and

(b) The Kentucky QHP/APTC Eligibility Verification Plan.

(2) Verification of eligibility for an applicant or tax filer who requests an eligibility determination for an insurance affordability program shall be in accordance with:

(a) 45 C.F.R. 155.320; and

(b) The Kentucky QHP/APTC Eligibility Verification Plan.

Section 5. QHP Enrollment Periods and Effective Dates of Coverage.

(1) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during an open enrollment period.

(2) The timeframe for an open enrollment period shall be established by the secretary of the Cabinet for Health and Family Services.

(3) A qualified individual or enrollee who selects a QHP during an open enrollment period shall have an effective date of coverage of:

(a) January 1, if a QHP selection is made on or before December 15 of the previous year;

(b) If after December 15, the first day of the following month, if a QHP selection is made between the first and the fifteenth of a month; or

(c) If after December 15, the first day of the second following month, if a QHP selection is made between the sixteenth and last day of a month.

(4)

(a) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during a SEP as established by Section 6 of this administrative regulation.

(b) A qualified individual or an enrollee who selects a QHP during a SEP shall have an effective date of coverage as set forth in Section 6 of this administrative regulation.

(5) An initial enrollment in a QHP shall not be effective until the first month's premium is received by the QHP issuer.

(6) A qualified individual may enroll in a Stand-Alone Dental Plan (SADP) outside the QHP Enrollment without an SEP. If the SADP is selected:

(a) On or before the 15th of the month, the effective date will be the first day of the following month.

(b) After the 15th of the month, the effective date will be the first day of the second following month.

Section 6. Special Enrollment Periods.

(1) Except as established by subsection (3) of this section, a qualified individual or enrollee shall have sixty (60) days from the date of a qualifying event as set forth in subsection (2) of this section to select a QHP.

(2) A qualified individual may enroll in a QHP or an enrollee or a dependent of an enrollee may change QHPs during a SEP if:

(a) The qualified individual or a dependent of the qualified individual:

1. Loses minimum essential coverage;

2. Is enrolled in any non-calendar year group health plan, individual health insurance coverage, or qualified small employer reimbursement arrangement even if the qualified individual or his or her dependent has the option to renew or reenroll in the coverage;

3. Loses pregnancy-related coverage described in 45 C.F.R. 155.420(d)(1)(iii);

4. Loses medically needy coverage as described under 42 C.F.R. 435.320 only once per calendar year; or

5. Is enrolled in coverage under 26 C.F.R. 54.9801–6(a)(3)(i) through (iii) for which an employer is paying all or part of the premiums and the employer ceases its contributions;

(b) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, placement in foster care, a child support order, or other court order;

(c) The qualified individual, or a dependent of the qualified individual, who was not previously a citizen, national, or lawfully present gains status as a citizen, national, or lawfully present;

(d) The enrollee is determined newly eligible or newly ineligible for APTC;

(e) The enrollee or a dependent of the enrollee becomes newly eligible for CSRs and is not enrolled in a silver-level QHP;

(f) The enrollee or a dependent of the enrollee becomes newly ineligible for CSRs and is enrolled in a silver-level QHP;

(g) The qualified individual or a dependent of the qualified individual who is enrolled in qualifying coverage in an employer-sponsored plan is determined newly eligible for APTC in part on a finding that the individual shall no longer be eligible for qualifying coverage in the employer-sponsored plan in the next sixty (60) days and is allowed to terminate existing coverage;

(h) The qualified individual or enrollee or a dependent of the qualified individual or the enrollee:

1. Gains access to new QHPs as a result of a permanent move; and

2. Had minimum essential coverage or MEC for one (1) or more days during the sixty (60) days preceding the date of the permanent move;

(i) The qualified individual is an Indian who may enroll in a QHP or change from one (1) QHP to another QHP one (1) time per month;

(j) The qualified individual is or becomes a dependent of an Indian and is enrolled or is enrolling in a QHP on the same application as the Indian, and may change from one (1) QHP to another QHP one (1) time per month, at the same time as the Indian;

(k) The qualified individual or enrollee or a dependent of the qualified individual or enrollee is no longer incarcerated;

(l) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee:

1. Gains access to an individual Health Reimbursement Arrangement or HRA; or

2. Is newly provided a Qualified Small Employer Health Reimbursement Arrangement or QSEHRA;

(m) The plan in which the enrollee or a dependent of the enrollee is enrolled is decertified by the division;

(n) The enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation;

(o) The enrollee or a dependent of the enrollee dies;

(p) The qualified individual or enrollee:

1. Is a victim of domestic abuse or spousal abandonment as defined by 26 C.F.R. 1.36B-2, or a dependent of the qualified individual or enrollee, or an unmarried victim of domestic abuse or spousal abandonment residing within the same household as the qualified individual or enrollee;

2. Is enrolled in MEC; and

3. Sought to enroll in coverage separate from the perpetrator of abuse or abandonment;

(q) The qualified individual or enrollee:

1. Is a dependent of an individual described in paragraph (i) of this subsection;

2. Is on the same application as the individual described in paragraph (i) of this subsection; and

3. Enrolls at the same time as the individual described in paragraph (i) of this subsection;

(r) The qualified individual or enrollee:

1. Applies for coverage during:

a. An annual open enrollment period; or

b. If there is a qualifying event, a SEP; and

2. Is determined ineligible for Medicaid or the Kentucky Children's Health Insurance Program or KCHIP:

a. After open enrollment has ended; or

b. More than sixty (60) days after the qualifying event;

(s) The qualified individual or dependent of the qualified individual enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or representative of the KHBE;

(t) The enrollee or dependent of the enrollee demonstrates to the KHBE that the QHP in which the enrollee or the dependent of the enrollee is enrolled substantially violated a provision of its contract in relation to the enrollee or dependent;

(u) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee, demonstrates to the KHBE that a material error related to a plan benefit, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP though KHBE. Material errors may include any incorrect premium, copay, co-insurance, or deductible amount, as well as services covered or providers included in network;

(v) The qualified individual:

1.

a. Was previously ineligible for APTC because of a household income below 100 percent of the FPL; and

b. Was ineligible for Medicaid due to living in a non-Medicaid expansion state during the same timeframe; and

2. Either:

a. Experiences a change in household income; or

b. Makes a permanent move to the Commonwealth of Kentucky resulting in the individual becoming newly eligible for APTC;

(w) The qualified individual or a dependent of the qualified individual:

1. Experiences a decrease in household income;

2. Is newly determined eligible by the KHBE for APTC; and

3. Had MEC for one (1) or more days during the sixty (60) days preceding the date of the change in household income; or

(x) The qualified individual or a dependent of the qualified individual meets other exceptional circumstances as defined by 45 C.F.R. 155.420(d)(9).

(3) The date of the triggering event for the loss of MEC shall be:

(a) For a decertification of a QHP as set forth in 900 KAR 10:115, the date of the notice of decertification;

(b) For an event described in subsection (2)(a)2. of this section, the last day of the plan year;

(c) For an event described in subsection (2)(a)5. of this section, the last day of the period for which COBRA continuation coverage is paid for, in part or in full, by an employer; or

(d) For all other cases, the date the qualified individual or dependent of the qualified individual loses eligibility for minimum essential coverage.

(4) Loss of MEC shall include those circumstances described in 26 C.F.R. 54.9801–6(a)(3)(i) through (iii).

(5) Loss of MEC shall not include termination or loss due to:

(a) Failure to pay premiums on a timely basis; or

(b) A situation allowing for a rescission as established by 45 C.F.R. 147.128.

(6) Except as established by subsection (7), (8), or (9) of this section, a qualified individual or enrollee who selects a QHP during a SEP shall have an effective date of coverage of:

(a) The first day of the following month for a selection made between the first and the fifteenth day of any month; or

(b) The first day of the second following month for a selection made between the sixteenth and last day of any month.

(7) A qualified individual or enrollee who selects a QHP:

(a) For a birth, adoption, placement for an adoption, placement in foster care, or child support or other court order, shall have an effective date of coverage of either:

1. The date of the birth, adoption, placement for adoption, placement in foster care, or effective date of court order; or

2. If the qualified individual or enrollee elects:

a. The first of the month following plan selection; or

b. In accordance with subsection (6) of this section;

(b) For a marriage, shall have an effective date of coverage of the first day of the month following plan selection;

(c) For a loss of coverage as described in subsection (2)(a) of this section, for a gain of access to a new QHP as a result of a permanent move as described in subsection (2)(h) of this section, or for being newly eligible for enrollment in a QHP as described in subsection (2)(c) or (2)(k) of this section, if:

1. The plan selection is made on or before the day of the triggering event, shall have a coverage effective date of the first day of the month following the triggering event; or

2. The plan selection is made after the date of the triggering event, shall have a coverage effective date in accordance with this subsection; or

(d) For a death as described in subsection (2)(o) of this section, shall have a coverage effective date:

1. Of the first day of the month following a plan selection; or

2. In accordance with paragraph (c) of this subsection.

(8) A qualified individual, enrollee, or dependent of the qualified individual or enrollee who selects a QHP as described in subsection (2)(g) of this section shall have a coverage effective date:

(a) If the plan selection is made before the day of the triggering event:

1. On the first day of the month following the triggering event; or

2. If the triggering event is on the first day of a month, on the date of the triggering event; or

(b) If the plan selection is made on or after the day of the triggering event, on the first day of the month following plan selection.

(9) A qualified individual or enrollee who selects a QHP in accordance with subsection (2)(a)4.,(r), (s), (t), (u),or (v) of this section shall have a coverage effective date based on the circumstances of the SEP.

(10)

(a) An individual described in subsection (2)(g) of this section may access a SEP sixty (60) days prior to the end of the individual's qualifying coverage in the employer-

sponsored plan.

(b) An individual who accesses a SEP as set forth in paragraph (a) of this subsection shall not be eligible for APTCs until the end of the individual's qualifying coverage through the eligible employer-sponsored plan.

(11) If an existing enrollee becomes newly eligible for CSRs and is not enrolled in a silver plan, the enrollee may choose a silver plan.

(12) If an enrollee and a dependent of an enrollee become newly ineligible for CSRs and are enrolled in a silver-level QHP, the enrollee may change to a QHP one (1) metal level higher or lower.

(13) If an enrollee gains a dependent due to marriage, birth, adoption, foster care, or court order, the enrollee shall:

(a) Not change plans; and

(b) Either:

1. Add the new dependent to the enrollee's current enrollment; or

2. Enroll the new dependent in a plan of any plan category.

(14) Except for the qualifying events established by subsection (2)(i), (l), (p), (u), and (v) of this section and the events described in subsections (11), (12), and (13) of this section:

(a) If an enrollee qualifies for a SEP, the enrollee may change to a QHP within the same level of coverage;

(b) If a dependent of an enrollee qualifies for a SEP and the enrollee does not also qualify for a SEP, the enrollee shall add the dependent to the enrollee's current QHP; or

(c) If a qualified individual who is not an enrollee qualifies for a SEP and has a dependent who is an enrollee who does not qualify for a SEP, the qualified individual shall be added to the dependent's current QHP.

(15) For a qualified individual, enrollee, or dependent described in subsection (2)(l) of this section, the triggering event shall be:

(a) The first day on which coverage for the qualified individual, enrollee, or dependent under the individual coverage HRA can take effect; or

(b) The first day on which coverage under the QSEHRA takes effect.

(16) A qualified individual, enrollee, or dependent described in subsection (2)(l) of this section shall:

(a) Qualify for a SEP regardless of whether they were previously offered or enrolled in an individual HRA or previously provided a QSEHRA, if:

1. The qualified individual, enrollee, or dependent is not enrolled in the individual coverage HRA; or

2. The qualified individual, enrollee, or dependent is not covered by the QSEHRA on the day immediately prior to the triggering event; and

(b)

1. Have sixty (60) days before the triggering event to select a QHP; or

2. Have sixty (60) days before or after the triggering event if the HRA or QSEHRA was not required to provide the notice described in 45 C.F.R. 146.123(c)(6), 26 C.F.R. 54.9802-4(c)(6), and 29 C.F.R. 2590.702-2(c)(6) or 26 U.S.C. 9831(d)(4).

(17) A qualified individual or enrollee, or the dependent of a qualified individual or enrollee, who is eligible for advance payments of the premium tax credit, and whose household income, as defined in 26 C.F.R. 1.36B-1(e), is expected to be no greater than 150 percent of the Federal poverty level, may enroll in a QHP or change from one QHP to another one (1) time per month during periods of time when the applicable taxpayer's applicable percentage for purposes of calculating the premium assistance amount, as defined in 26 U.S.C. 36B(b)(3)(A), is set at zero.

(18) If a qualified individual, enrollee, or dependent of a qualified individual or an enrollee did not receive timely notice of an event that triggers eligibility for a SEP under this section, and otherwise was reasonably unaware that a triggering event described in

this section occurred, the qualified individual, enrollee, or his or her dependent shall have sixty (60) days from the date that he or she knew, or reasonably should have known, of the occurrence of the triggering event.

(19) A qualified individual, enrollee, or dependent of a qualified individual or enrollee, described in 45 C.F.R. 155.420 as being eligible for a SEP not specified in this section of this administrative regulation shall be eligible for a SEP.

(20) For purposes of this section, a qualified individual, enrollee, or dependent of a qualified individual or enrollee shall be:

(a) Eligible for APTC if eligibility is for an amount greater than zero dollars per month; or

(b) Ineligible for APTC if eligible for a maximum of zero dollars per month.

Section 7. Verifications for Special Enrollment Periods.

(1) KHBE shall conduct pre-enrollment verification of newly enrolling individuals as established by this section.

(2) A QHP enrollment for an individual subject to verification shall not be submitted to the issuer pending verification for a SEP.

(3) For an enrollment subject to verification as described in this section, a new enrollee shall have thirty (30) days from the date of plan selection to provide requested documentation.

(4) A qualifying individual described in Section 6(2)(h) of this administrative regulation shall provide proof of:

(a) A permanent move during the past sixty (60) days; and

(b) Either:

1. Having had MEC for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Having:

a. Lived in a foreign county or in a US territory for one (1) or more days during the sixty (60) days preceding the qualifying event;

b. Lived in a service area where no qualified health plan was available through KHBE for one (1) or more days during the sixty (60) days preceding the qualifying event or their most recent open enrollment or SEP; or

c. Status as an Indian.

(5) For a marriage, as described in Section 6(2)(b) of this administrative regulation, a qualified individual shall provide proof of marriage during the past sixty (60) days.

(6) Other than as described in subsections (4) and (5) of this section, a qualified individual described in Section 6(2)(b) of this administrative regulation shall provide proof of:

(a) The qualifying event during the past sixty (60) days; and

(b) Either:

1. Having MEC as described in Section 6(2)(a) of this administrative regulation for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Meeting the requirements in subsection (4)(b) of this section.

(7) For a loss of MEC as described in Section 6(2)(a) of this administrative regulation, a qualified individual shall provide proof of coverage for one (1) or more days during the past sixty (60) days.

(8) SEP verification shall not impact an enrollee's effective date of coverage except as provided in 45 C.F.R. 155.400(e)(1)(iii).

Section 8. Eligibility Redetermination During a Benefit Year.

(1) Eligibility shall be redetermined for an enrollee during a benefit year if the KHBE receives and verifies:

(a) New information reported by an enrollee; or

(b) Updated information obtained in accordance with 45 C.F.R. 155.330(d).

(2) Except as established by subsection (3) of this section, an enrollee or an application filer, on behalf of an enrollee, shall report within thirty (30) days:

(a) A change related to an eligibility standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Via a method described in Section 1(5) of this administrative regulation.

(3) An enrollee who did not request an eligibility determination for an insurance affordability program shall not report a change related to income.

(4) If new information provided by an enrollee in accordance with subsection (1)(a) of this section is verified:

(a) Eligibility shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation;

(b) The enrollee shall be notified of the redetermination in accordance with the requirements in 45 C.F.R. 155.310(g); and

(c) If applicable, the enrollee's employer shall be notified in accordance with the requirement established by 45 C.F.R. 155.310(h).

(5) If updated information obtained in accordance with subsection (1)(b) of this section regarding death or related to eligibility not regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information; and

2. The projected enrollees' eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice in paragraph (a) of this subsection to notify the KHBE if the information is inaccurate.

(6) If an enrollee responds to the notice in subsection (5)(a) of this section, contesting the updated information in the notice, the KHBE shall proceed in accordance with 45 C.F.R. 155.315(f).

(7) If an enrollee does not respond to the notice in subsection (5)(a) of this section within the thirty (30) day timeframe specified in subsection (5)(b) of this section, the KHBE shall:

(a) Redetermine eligibility in accordance with the standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(8) With the exception of information regarding death, if updated information regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information regarding income, family size, and family composition obtained in accordance with subsection (1)(b) of this section; and

2. The projected eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice to:

1. Confirm the updated information; or

2. Provide additional information.

(9) If the enrollee responds to the notice in subsection (8)(a) of this section by confirming the updated information, the KHBE shall:

(a) Redetermine the enrollee's eligibility in accordance with Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(10) If the enrollee does not respond to the notice in subsection (8)(a) of this section within the thirty (30) day timeframe established by subsection (8)(b) of this section, the KHBE shall maintain the enrollee's existing eligibility determination without considering the updated information in subsection (8)(a) of this section.

(11) If the enrollee responds with more updated information, the KHBE shall verify the updated information in accordance with 45 C.F.R. 155.315 and 155.320.

(12) The effective date of a change resulting from a redetermination pursuant to this section shall be in accordance with 45 C.F.R. 155.330(f).

(13) The amount of an APTC or eligibility for a CSR as a result of an eligibility redetermination in accordance with this section shall be recalculated in accordance with 45 C.F.R. 155.330(g).

Section 9. Annual Eligibility Redetermination.

(1) A qualified individual shall:

(a) Have an annual redetermination of eligibility; and

(b) Be sent a notice of the annual redetermination that includes:

1. The data obtained under subsection (2) of this section;

2. The data used in the qualified individual's most recent eligibility determination; and

3. The projected eligibility determination for the following year, after considering the information in subparagraph 1. of this paragraph.

(2)

(a) A qualified individual requesting an eligibility determination for an insurance affordability program shall authorize the release of updated tax return information, data regarding Social Security benefits, and data regarding MAGI-based income, as defined by 42 C.F.R. 435.603(e) and as described in 45 C.F.R. 155.320(c)(1), for use in the qualified individual's eligibility redetermination.

(b) Eligibility shall not be redetermined for a qualified individual requesting an eligibility determination for an insurance affordability program who does not authorize the release of updated tax return information.

(3) A qualified individual may authorize the release of tax return information for a period of no more than five (5) years based on a single authorization, if the authorization permits the qualified individual to:

(a)

1. Decline to authorize the release of updated tax return information; or

2. Authorize the release of updated tax return information for fewer than five (5) years; and

(b) Discontinue, change, or renew the authorization at any time.

(4) A qualified individual, an application filer, or an authorized representative, on behalf of the enrollee, shall report any changes with respect to the information listed in the notice described in subsection (1)(b) of this section:

(a) Within thirty (30) days from the date of the notice; and

(b) Via a method listed in Section 1(5) of this administrative regulation.

(5) Any information reported by a qualified individual under subsection (4) of this section shall be verified as set forth in Section 4 of this administrative regulation.

(6) For a qualified individual who fails to act on the notice described in subsection (1)(b) of this section within the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined as set forth in subsection (7)(a) of this section.

(7)

(a) After the thirty (30) day period established by subsection (4) of this section:

1. Eligibility of a qualified individual shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation using the

information provided in the notice, as supplemented with any information reported by the qualified individual verified in accordance with Section 4 of this administrative regulation;

2. The qualified individual shall be notified in accordance with the requirements in 45 C.F.R. 155.310(g); and

3. If applicable, the qualified individual's employer shall be notified in accordance with 45 C.F.R. 155.310(h).

(b) If a qualified individual reports a change with respect to the information provided in the notice established by subsection (1)(b) of this section that has not been verified by the KHBE as of the end of the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined after verification in accordance with Section 4 of this administrative regulation.

(8) The effective date of a redetermination in accordance with this section shall be the later of:

(a) The first day of the coverage year following the year in which the notice in subsection (1)(b) of this section is issued to the qualified individual; or

(b) The date determined in accordance with 45 C.F.R. 155.330(f)(1).

(9) If an enrollee remains eligible for coverage in a QHP upon annual redetermination and has not terminated coverage from the QHP in accordance with Section 10 of this administrative regulation, the enrollee shall:

(a) Remain in the QHP selected the previous year that may include modifications that shall be approved by the Department of Insurance; or

(b) Be enrolled by KHBE in a QHP that is substantially similar that shall be approved by the Department of Insurance.

(10) Eligibility shall not be redetermined if a qualified individual was redetermined eligible in accordance with this section during the prior year, and the qualified individual was not enrolled in a QHP when the redetermination was made and has not enrolled in a QHP since the redetermination.

Section 10. Eligibility to Enroll in a QHP that is a Catastrophic Plan.

(1) In addition to the requirements in Section 1 of this administrative regulation, to enroll in a QHP that is a catastrophic plan, an applicant shall:

(a) Not have attained the age of thirty (30) before the beginning of the plan year; or

(b) Have a certificate of exemption from the shared responsibility payment issued by the KHBE or HHS for a plan year in accordance with:

1. 26 U.S.C. 5000A(e)(1); or

2. 26 U.S.C. 5000A(e)(5).

(2) Verification related to eligibility for enrollment in a QHP that is a catastrophic plan shall be in accordance with 45 C.F.R. 155.315(j).

Section 11. Special Eligibility Standards and Processes for Indians.

(1) An applicant who is an Indian, as defined by 25 U.S.C. 1603(13), shall be eligible for the special cost sharing described in 45 C.F.R. 155.350(b) if the applicant:

(a) Meets the requirements established by 45 C.F.R.155.305(a) and (f);

(b) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 305(g)(3)(vi) for the benefit year for which coverage is requested; and

(c) Enrolls in a QHP through the KHBE.

(2) An applicant who is an Indian shall have an eligibility determination for the special cost sharing described in 45 C.F.R. 155.350(b) without requesting an eligibility determination for an insurance affordability program.

Section 12. Eligibility Determination and Notification Standards.

(1) Eligibility shall be determined in accordance with 45 C.F.R. 155.310(e).

(2) Notifications regarding eligibility determinations shall be made in accordance with 45 C.F.R. 155.310(g).

Section 13. Termination of Coverage.

(1) An enrollee, including an enrollee who has obtained other MEC, may terminate coverage in a QHP by submitting a request:

(a) Via the Web site at www.kynect.ky.gov;

(b) By telephone;

(c) To the QHP issuer;

(d) By mail; or

(e) In person.

(2) An enrollee in a QHP may choose to remain in a QHP without financial assistance if the enrollee:

(a)

1. Has been identified as eligible for other MEC through the data matching described in 45 C.F.R. 155.330(d); or

2. Has been identified as eligible for Medicaid, KCHIP, or Medicare and has granted prior permission to KHBE; and

(b) Does not request termination in accordance with subsection (1) of this section.

(3) The last day of coverage of an enrollee who terminates coverage in accordance with subsection (1) of this section shall be:

(a) The termination date requested by the enrollee if the enrollee provides reasonable notice in accordance with subsection (7) of this section;

(b) Fourteen (14) days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice in accordance with subsection (7) of this section;

(c) A date determined by the issuer of an enrollee's QHP if the issuer is able to terminate coverage in fewer than fourteen (14) days and the enrollee requests an earlier termination effective date; or

(d) If the enrollee is newly eligible for Medicaid or KCHIP, the day before coverage in Medicaid or KCHIP begins.

(4) An enrollee's health coverage shall be terminated by an issuer if:

(a) The enrollee is no longer eligible for coverage in a QHP through the KHBE;

(b) The enrollee has failed to pay a premium and:

1. A three (3) month grace period required for an individual receiving an APTC has been exhausted as described in 45 C.F.R. 156.270(g); or

2. A thirty (30) day grace period required by KRS 304.17A-243 for an individual not receiving an APTC has been exhausted;

(c) The enrollee's coverage is rescinded in accordance with 45 C.F.R. 147.128 or KRS 304.14-110;

(d) The enrollee is enrolled in a QHP that:

1. Has been decertified pursuant to 900 KAR 10:115; or

2. Has withdrawn from participation in the KHBE; or

(e) The enrollee changes from one (1) QHP to another during an open enrollment period or SEP in accordance with Section 5 or 6 of this administrative regulation.

(5) The last day of coverage of an enrollee shall be:

(a) If terminated in accordance with subsection (4)(a) of this section, the last day of the month following the month in which the notice described in subsection (7) of this section is sent by KHBE, unless the enrollee requests an earlier termination date in accordance with subsection (3) of this section;

(b) If terminated in accordance with subsection (4)(b)1. of this section, the last day of the first month of the three (3) month grace period; or

(c) If terminated in accordance with subsection (4)(b)2. of this section, in accordance with KRS 304.17A-245.

(6) For an enrollee who is terminated in accordance with subsection (4)(e) of this section, the last day of coverage in an enrollee's prior QHP shall be the day before the effective date of coverage in the enrollee's new QHP.

(7) Reasonable notice shall be fourteen (14) calendar days from the requested date of termination of coverage.

Section 14. Authorized Representative.

(1) An individual may designate an authorized representative in accordance with 45 C.F.R. 155.227.

(2) An authorized representative shall comply with state and federal laws regarding:

(a) Conflict of interest; and

(b) Confidentiality of information.

(3) An applicant may authorize a representative to:

(a) Sign an application on behalf of the applicant;

(b) Submit an update or respond to a redetermination of eligibility for the applicant in accordance with Section 7 or 8 of this administrative regulation;

(c) Receive a copy of a notice or communication from the KHBE;

(d) Make an appeal request on behalf of an appellant; and

(e) Act on behalf of the individual in a matter with the KHBE.

(4) An authorization for an authorized representative shall be valid until:

(a) An applicant:

1. Changes the authorization; or

2. Notifies the KHBE and the authorized representative, through a method described in 45 C.F.R. 155.405(c), that the authorized representative is no longer authorized to act on behalf of the individual; or

(b) The authorized representative informs the KHBE and the individual that the authorized representative is no longer acting as the authorized representative.

Section 15. SHOP Employer Eligibility.

(1) An employer shall be a qualified employer and eligible to purchase coverage through SHOP if the employer meets the eligibility requirements established in 45 C.F.R. 155.710(b).

(2) An employer shall apply for an eligibility determination online to participate in SHOP at www.kynect.ky.gov.

(3) Upon application, an employer shall provide:

(a) Employer name;

(b) Address of employer location;

(c) A valid federal employer identification number; and

(d) A statement from the employer attesting that the employer is:

1. A small employer; and

2. Offering at a minimum, all full-time employees coverage in a QHP through SHOP.

(4) Except as provided in 45 C.F.R. 147.104(b)(1)(i)(B), a qualified employer shall meet a minimum group participation rate of fifty (50) percent, calculated as described in 45 C.F.R. 155.706 (b)(10)(i).

(5) A qualified employer may purchase coverage for its qualified employees at any time during the year.

(6) An employer's plan year shall be the twelve (12) month period beginning with the effective date of coverage.

(7) An employer shall enroll in a QHP or SADP certified by the division by contacting an issuer or a participating agent.

(8) A qualified employer who ceases to be a small employer by reason of an increase in the number of employees shall be eligible to participate in SHOP until the employer:

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

(b) Chooses to no longer purchase health coverage.

(9) An employer that fails to meet the requirements in subsection (1) of this section, shall be denied eligibility to participate in SHOP.

Section 16. SHOP Right to Formal Review.

(1) An employer applicant may request a formal review of a:

(a) Denial of eligibility as set forth in Section 15(9) of this administrative regulation; or

(b) Failure of the KHBE to make an eligibility determination to participate in SHOP within fifteen (15) calendars days of receiving an application from an employer.

(2) Within ninety (90) days of receipt of a notice of denial of eligibility, an employer may submit a formal review request to the division by:

(a) Telephone;

(b) Mail; or

(c) Email.

(3) A formal review request shall clearly state a reason for the formal review in accordance with subsection (1) of this section.

(4) If an employer is notified that a formal review request does not meet the requirements of this section, the employer may amend the request to satisfy the requirements.

Section 17. SHOP Dismissal of a Formal Review.

(1) A formal review by an employer shall be dismissed if the employer:

(a) Withdraws the formal review request in writing; or

(b) Fails to submit a formal review request that meets the requirements in Section 16 of this administrative regulation.

(2) If a formal review is dismissed in accordance with subsection (1) of this section, the division shall provide written notice to the employer:

(a) Within three (3) business days of the dismissal; and

(b) That includes the reason for dismissal.

(3) The division may reverse a dismissal under subsection (2) of this section if an employer makes a written request within thirty (30) days of the date of the notice of dismissal in subsection (2) of this section and provides new information supporting a reversal of the previous decision.

Section 18. SHOP Desk Review.

(1) An employer shall have the opportunity to submit evidence to the division for review of an eligibility determination.

(2) The division shall consider:

(a) The information used to determine the employer's eligibility; and

(b) Any additional evidence provided by the employer under subsection (1) of this section.

(3) An applicant's formal review request shall be desk reviewed by one (1) or more impartial division officials who have not been directly involved in the eligibility determination implicated in the formal review.

Section 19. SHOP Formal Review Decision.

(1) A desk review by an official of the division shall result in a final formal review decision.

(2) A final formal review decision shall:

(a) Be in writing;

(b) Be based on the eligibility requirements in Section 15 of this administrative regulation;

(c) State the decision and the effect of the decision on the eligibility of the employer;
(d) Summarize the facts relevant to the formal review;
(e) Identify the legal and regulatory basis for the decision;
(f) State the effective date of the decision; and
(g) Be rendered within ninety (90) days of receipt by the division of an employer formal review request.

(3) The division shall issue written notice of the formal review decision to the employer within ninety (90) days of the date of receipt of a formal review request.

(4) If the formal review decision affects the employer's eligibility, the division shall implement the formal review decision.

Section 20. SHOP Formal Review Record. The formal review record shall be available and accessible to an employer:

(1) In a convenient format; and

(2) During regular business hours, which shall:
(a) Be Monday through Friday from 8:00 a.m. to 4:30 p.m.; and
(b) Exclude holidays.

Section 21. Incorporation by Reference.

(1) "Kentucky QHP/APTC Eligibility Verification Plan", Revised May 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Health Benefit Exchange, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.khbe.ky.gov.

(47 Ky.R. 2203; 48 Ky.R. 48; eff. 7-21-2021; 49 Ky.R. 124, 1263, 1402; eff. 1-12-2023.)

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