

**900 KAR 10:125. KHBE Consumer Assistance Program, kynector Certification, and Individual Agent Participation with the KHBE.**

RELATES TO: KRS Chapter 45A, Chapter 304, 304.2-310, 29 U.S.C. 794, 42 U.S.C. 12101-12103, 18022, 18031, 18042, 18054, 45 C.F.R. Part 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 the registration of an individual agent and certification of a kynector, including a certified application counselor or navigator in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

**Section 1. KHBE Consumer Assistance Programs.**

(1) The kynector program, in accordance with the accessibility standards of 45 C.F.R. 155.205(c) and (d), shall include the following:

- (a) The certified application counselor program described in Section 2 of this administrative regulation; and
- (b) The navigator program described in Section 3 of this administrative regulation.

(2) A kynector shall:

- (a) Receive training in accordance with 45 C.F.R. 155.215(b)(2) that shall be provided by the division or an approved vendor;
- (b) Complete Medicaid, KCHIP, and other applicable training provided by CHFS;
- (c) Complete all training required by the division within three (3) attempts;
- (d) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205, 155.210, 155.215, and 155.225 and this administrative regulation;
- (e) Refer a consumer to other consumer assistance programs and community resources in Kentucky if available and appropriate;
- (f) Be prepared to serve the individual exchange, Medicaid program, KCHIP, and other programs as designated by the secretary of CHFS; and
- (g) Comply with the privacy and security standards consistent with 45 C.F.R. 155.260.

**Section 2. Certified Application Counselor Program.**

(1) The certified application counselor program shall comply with the provisions of 45 C.F.R. 155.225.

(2) An organization shall apply to the division to be designated as a certified application counselor.

(3) Upon designation by the division to participate in the certified application counselor program, an organization shall:

- (a) Act in the best interest of an applicant;
- (b) Provide information in a manner that is accessible to individuals with disabilities directly or through a referral to a kynector; and
- (c) Provide quarterly reports of an activity to the division.

(4) A staff or a volunteer of a certified application counselor organization shall act as a kynector to:

- (a) Provide information about an insurance affordability program and a QHP or SADP coverage option;

- (b) Assist an individual to apply through the KHBE for coverage in a QHP, SADP, or an insurance affordability program; and
- (c) Help to facilitate enrollment of a qualified individual in a QHP, SADP, or an insurance affordability program.
- (5) An individual operating as a certified application counselor shall:
  - (a) Be identified by a designated organization described in subsection (2) of this section as an employee or a volunteer of the designated organization;
  - (b) Agree to act in the best interest of an applicant;
  - (c) Provide information with reasonable accommodation for an individual with a disability, as defined by 42 U.S.C. 12101 through 12103, if providing in-person assistance; and
  - (d) Register with the division through the KOG.
- (6) A certified application counselor shall not:
  - (a) Impose any charge or fee on an applicant for application assistance;
  - (b) Receive compensation or a referral fee from an agent; or
  - (c) Enter into an exclusive referral agreement with an agent.
- (7) In accordance with the procedures established in Section 4 of this administrative regulation, the division shall withdraw certification from a kynector or kynector entity if it finds noncompliance with the terms and conditions of the kynector or kynector entity agreement or this administrative regulation.

### Section 3. Navigator Program.

- (1) In accordance with 45 C.F.R. 155.205(d) and (e), 155.210, and 155.215, the division shall establish a navigator program to authorize an eligible public or private entity to carry out consumer assistance functions as described in 45 C.F.R. 155.205 and this section.
- (2) An entity wishing to participate as a navigator shall:
  - (a) Be awarded a contract by the division pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;
  - (b) Designate an individual as the participating entity representative who shall:
    - 1. Register with the division through the KOG as the individual authorized by the agency;
    - 2. Serve as a primary contact for the division;
    - 3. Be responsible for ensuring that only an employee of the navigator agency is registered through KOG as a certified navigator;
    - 4. Comply with 45 C.F.R. 155.210(b)(1) and (d) regarding a conflict of interest; and
    - 5. As a navigator employee, comply with this subsection;
  - (c) Designate an individual employee who shall participate through the navigator entity and who shall register with the division through the KOG;
  - (d) Submit to the division a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e), and 155.210; and
  - (e) Provide a monthly report of activities to the division.
- (3) An employee designated as a navigator by the kynector entity shall:
  - (a) Be eighteen (18) years of age or older;
  - (b) Provide an authorization to the navigator entity to conduct a state background check for evidence of good character; and
  - (c) Travel, if necessary, to assist an applicant with enrollment.
- (4) A navigator entity and its employees shall:
  - (a) Inform an applicant of the functions and responsibilities of a navigator and a participating agent;

- (b) Obtain authorization for the disclosure of applicant information prior to assisting an applicant with prescreening and completion of the application process; and
- (c) Provide technical support to another navigator, navigator entity, or the division upon request.
- (5) Upon authorization by the division, a navigator may assist:
  - (a) A qualified individual with enrollment in any QHP or SADP offered through the KHBE in the individual market;
  - (b) A small employer with applying for an eligibility determination online to participate on SHOP; or
  - (c) An individual with applying for insurance affordability programs, including Medicaid or KCHIP, and other public assistance programs as designated by KHBE.
- (6) A navigator entity and its employees shall:
  - (a) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about a QHP, SADP, or an insurance affordability program; and
  - (b) Provide information and services in a fair, accurate, and impartial manner.
- (7) A navigator entity and its employees shall not:
  - (a) Impose any charge or fee on an applicant for their assistance;
  - (b) Receive compensation or a referral fee from an agent; or
  - (c) Enter into an exclusive referral agreement with an agent.
- (8) A navigator entity and its employees shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, Section 504 of the Rehabilitation Act, and 29 U.S.C. 794.
- (9) A navigator entity or its employees shall provide a referral to the DOI for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.
- (10) A navigator entity or its employees shall demonstrate to the division that the entity has existing relationships, or could readily establish relationships, with:
  - (a) Consumers, including uninsured and underinsured consumers; or
  - (b) Self-employed individuals eligible for a QHP, SADP, or another insurance affordability program.
- (11)
  - (a) In accordance with Section 4 of this administrative regulation, the division shall withdraw certification if it finds noncompliance with the terms and conditions of the agreement from:
    - 1. An individual navigator; or
    - 2. A navigator entity.
  - (b) In addition to withdrawal of certification, the division may enforce any penalty as specified in the contract.

#### Section 4. Withdrawal of Certification of a kynector and Appeals.

- (1) If the division finds noncompliance with the terms and conditions of an agreement or this administrative regulation, the division shall:
  - (a) Provide the kynector entity or kynector with notice that the applicable certification shall be withdrawn as of the date on the notice;
  - (b) Allow the kynector entity or kynector an opportunity to submit evidence of compliance or additional information within ten (10) business days;
  - (c) Review any information submitted by the kynector entity or kynector; and

- (d) Based on a review of the information provided, issue a final decision to withdraw or reinstate the applicable certification of the kynector entity or kynector.
- (2) A kynector entity or kynector may appeal a final decision to withdraw the applicable certification by submitting a written request to the division within ten (10) business days of the final decision.
- (3) After one (1) year following a decision to withdraw certification of a kynector entity or kynector, the kynector or kynector entity may reapply in accordance with this administrative regulation.

Section 5. Requirements to be a Participating Individual Agent. An agent wishing to participate on KHBE in accordance with 42 U.S.C. 18031 and 45 C.F.R. 155.220 shall:

- (1) Be licensed by DOI with a health line of authority;
- (2) Complete the agent training provided by the division in accordance with 45 C.F.R. 155.220(d)(2) within three (3) attempts;
- (3) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205 and 155.220 and this administrative regulation;
- (4) Comply with the privacy and security standards of 45 C.F.R. 155.260;
- (5) Except for an employee of an issuer or an individual agent directly contracted with an issuer, maintain:
  - (a) An appointment with at least one (1) QHP or SADP issuer participating on the KHBE; or
  - (b) A designation with a business entity having an appointment with at least one (1) QHP or SADP issuer participating on the KHBE;
- (6) Register with the KHBE through the KOG; and
- (7) Not serve as a web broker or consultant while assisting individuals with the activities described in Section 6 of this administrative regulation.

Section 6. Permitted Activities of a Participating Individual Agent.

- (1) Upon completion of the registration requirements as set forth in Section 5 of this administrative regulation, a participating individual agent may:
  - (a) Enroll a qualified individual in any QHP or SADP offered by an issuer with which the individual agent has the appropriate designation or appointment as required by Section 5(5) of this administrative regulation through the KHBE in the individual market;
  - (b) Assist a qualified employer in selecting a QHP or SADP offered by an issuer with which the individual agent has the appropriate designation or appointment as required by Section 5(5) of this administrative regulation; or
  - (c) Assist an individual to apply through the KHBE for coverage in a QHP, SADP, or an insurance affordability program.
- (2) A qualified individual may be enrolled in a QHP or SADP through the KHBE by a participating individual agent if the participating individual agent ensures the applicant's completion of an application as described in 45 C.F.R. 155.405.
- (3) A participating individual agent shall:
  - (a) Disclose to a potential applicant any relationships the individual agent has with a QHP or SADP issuer, insurance affordability program, or other potential conflicts of interest identified by the division; and
  - (b) Not:
    - 1. Impose any charge or fee on an applicant for assistance in completing an application for, or enrolling in, a QHP, a SADP, or an insurance affordability program;
    - 2. Provide compensation or a referral fee to a kynector; and
    - 3. Enter into an exclusive referral agreement with a kynector.

(4) If the division finds noncompliance with this administrative regulation, the division shall withdraw an agent's registration and participation with the KHBE after giving:

- (a) Notice to the participating individual agent; and
- (b) An opportunity to respond to the notice required by paragraph (a) of this subsection in accordance with Section 8 of this administrative regulation.

Section 7. Renewal of Participation and Registration with the Division. To maintain registration with the division, a participating individual agent shall:

- (1) Comply with training provided by the division;
- (2) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205 and 155.220 and this administrative regulation;
- (3) Maintain licensure, appointments, and designations as identified in Section 5 of this administrative regulation;
- (4) Comply with the requirements of 45 C.F.R. 155.220; and
- (5) Comply with 900 KAR Chapter 10.

Section 8. Withdrawal of Registration as an Individual Agent and Appeals.

(1)

(a) Except as established in subsection (2) of this section, if the division finds noncompliance with the terms and conditions of an individual agent agreement or 900 KAR Chapter 10, the division shall:

- 1. Provide the participating individual agent with notice that the applicable registration shall be withdrawn as of the date of notice;
- 2. Allow the participating individual agent an opportunity to submit evidence of compliance or additional information within ten (10) business days;
- 3. Review any information submitted by the participating individual agent; and
- 4. Based on a review of the information provided, issue a decision to uphold the withdrawal or reinstate the applicable registration of a participating individual agent.

(b) A participating individual agent shall have the right to appeal a decision to withdraw registration in accordance with paragraph (a) of this subsection through the division.

(2)

(a) If the health line of authority or licensure of an agent is suspended, revoked, or expired, the registration of the agent shall be withdrawn by the division based on DOI's administrative action.

(b) Any appeal or request of an action by DOI pursuant to paragraph (a) of this subsection shall be made to DOI in accordance with KRS 304.2-310(2)(b).

(3) After one (1) year following a decision to withdraw the registration of a participating individual agent, the individual agent may reapply in accordance with Section 5 of this administrative regulation.

(47 Ky.R. 2211; 48 Ky.R. 54; eff. 7-21-2021.)