

TITLE 41
INSURANCE

CHAPTER 61
IDAHO HEALTH INSURANCE EXCHANGE ACT

41-6101. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Health Insurance Exchange Act."

[41-6101, added 2013, ch. 170, sec. 1, p. 390.]

41-6102. PURPOSE AND INTENT. It is the public policy of the state of Idaho to actively resist federal actions that would limit or override state sovereignty under the 10th amendment of the United States constitution. Through this legislation, the state of Idaho asserts its sovereignty by refusing to surrender decision-making authority over health care issues, which are matters appropriately left to states and individual citizens. The purpose of this chapter is to establish a state-created, market-driven health insurance exchange that will facilitate the selection and purchase of individual and employer health benefit plans. The creation of a state-based health insurance exchange will provide an Idaho-specific solution that fits the unique needs of the state of Idaho. Participation in the exchange is voluntary in that no person or employer shall be required by this chapter to purchase a health benefit plan through the exchange. Creation of the exchange and its operation is deemed a public purpose intended to enhance Idaho residents' choice regarding options and access to health insurance.

[41-6102, added 2013, ch. 170, sec. 1, p. 390.]

41-6103. DEFINITIONS. For the purposes of this chapter:

(1) "Board" means those individuals who, acting as a board of directors of the exchange, govern and act for the exchange pursuant to section [41-6104](#), Idaho Code.

(2) "Conflict of interest" means that by taking any action or making any decision or recommendation on a matter within the authority of the board, a member of the board, or a person within the member's household, or any entity with which the member, or a person within the member's household is associated, would receive a pecuniary benefit or detriment, unless the pecuniary benefit or detriment would apply to the same degree to a class consisting of all persons within the particular class in this state.

(3) "Director" means the director of the department of insurance of the state of Idaho.

(4) "Exchange" means the Idaho health insurance exchange established pursuant to this chapter.

(5) "Health carrier" has the same meaning as "carrier" as set forth in section [41-5203](#)(5), Idaho Code.

(6) "Person" has the same meaning as set forth in section [41-104](#), Idaho Code.

(7) "Producer" has the same meaning as set forth in section [41-1003](#)(8), Idaho Code.

(8) "Stand-alone dental plan" means a policy, certificate of insurance or subscriber contract that provides only dental health plan benefits, which may include adult, pediatric or both, and is approved by the department of insurance as being in compliance with the requirements of state law and de-

partmental rules relating to such policy, certificate of insurance or subscriber contract.

[41-6103, added 2013, ch. 170, sec. 1, p. 391; am. 2015, ch. 193, sec. 1, p. 602.]

41-6104. ESTABLISHMENT OF THE EXCHANGE AND THE BOARD. (1) There is hereby created an independent body corporate and politic to be known as the "Idaho Health Insurance Exchange." Said exchange may exercise the authority and powers conferred by this chapter and such exercise shall be deemed and held to be the performance of an essential public function.

(2) The exchange created by this chapter is not a state agency, shall not be subject to the purchasing statutes and rules of the state of Idaho or subdivisions of the state including, but not limited to, chapters 28 and 57, [title 67](#), Idaho Code, and shall operate subject to the supervision and control of its board.

(3) The board shall consist of nineteen (19) total members, with seventeen (17) voting members. Subject to the provisions of this section, members of the board shall collectively offer expertise, knowledge and experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health and health policy issues related to small employer and individual markets and the uninsured. A majority of the board shall not collectively represent health carriers and producers. The fourteen (14) voting members who are not members of the legislature shall be appointed to the board by, and serve at the pleasure of, the governor. The members appointed to the board by the governor shall be subject to confirmation by the senate, provided that, upon appointment, board members shall have full authority to exercise all the rights and duties and participate in all decisions required of the position. The seventeen (17) voting members of the board shall be appointed as follows:

- (a) Three (3) members representing different health carriers appointed by the governor;
- (b) Two (2) members representing producers appointed by the governor;
- (c) Three (3) members representing individual consumer interests appointed by the governor;
- (d) Four (4) members representing small employer business interests appointed by the governor with, at the time of appointment:
 - (i) One (1) member representing small employer business interests employing between one (1) and ten (10) employees;
 - (ii) One (1) member representing small employer business interests employing between eleven (11) and twenty-five (25) employees;
 - (iii) One (1) member representing small employer business interests employing twenty-six (26) or more employees; and
 - (iv) One (1) at-large member;
- (e) Two (2) members representing health care providers appointed by the governor;
- (f) One (1) member of the house of representatives appointed by the speaker of the house;
- (g) One (1) member of the senate appointed by the president pro tempore; and
- (h) One (1) member of the legislature representing the minority party in the legislature appointed by minority leadership.

The director or his designee and the director of the state department of health and welfare or his designee shall each serve as ex officio nonvoting members of the board.

(4) The fourteen (14) board members appointed by the governor shall each serve a term of four (4) years or until a successor is appointed. A board member may be appointed by the governor to serve subsequent terms. A vacancy in a member's position on the board shall be filled in the same manner as the original appointment.

(5) Whenever a member of the board has a conflict of interest on a matter that is before the board, the member shall fully disclose it to the board, abstain from any vote on the matter and shall also comply with any additional requirements established pursuant to the plan of operation under section [41-6105](#), Idaho Code.

(6) Neither members of the board nor any other person working or performing services for the exchange shall be:

(a) Considered public officials, employees or agents of the state of Idaho by virtue of their service on the board or performance of services for the exchange; or

(b) Eligible for or entitled to benefits from the public employee retirement system of Idaho.

(7) Nothing in this chapter shall prevent a member of the board who is otherwise a current or former state employee from receiving his usual state compensation and benefits while serving on the board.

(8) All meetings of the board shall be held in accordance with the open meetings law as provided for in [chapter 2, title 74](#), Idaho Code, shall be held in an open public forum, and every reasonable effort shall be made to make such meetings televised or streamed in video and audio format.

(9) The board shall contract for an annual audit of the exchange by an independent third party and shall accept requests for proposal to bid on such contract.

(10) The board shall develop, adopt and implement procurement policies and guidelines.

(11) Premium rates charged by a health carrier for a health benefit plan or stand-alone dental plan offered in the exchange shall be based upon Idaho rating areas established by the director consistent with 42 U.S.C. section 300gg, et seq.

[41-6104, added 2013, ch. 170, sec. 1, p. 391; am. 2017, ch. 58, sec. 28, p. 122.]

41-6105. POWERS AND AUTHORITY OF THE EXCHANGE. (1) Unless otherwise required by this chapter, in the discretion of the board, the exchange shall have the powers and authority to:

(a) Perform all duties that are necessary and appropriate to implement a health insurance exchange and the provisions of this chapter;

(b) Adopt bylaws for the regulation of its affairs and the conduct of its business, subject to the review and approval by the director. The director's consent shall be required for any amendment to the bylaws;

(c) Assess and collect fees from participating health carriers, exchange users and receive funds from any other source, that shall be used solely for the purposes of this chapter. The exchange shall not be subject to income tax imposed by the state of Idaho under [chapter 30, title 63](#), Idaho Code;

(d) Appoint any advisory committees as deemed necessary by the board;

(e) Take any legal action to recover any amounts lawfully owed to the exchange or otherwise consistent with this chapter;

(f) Enter into contracts to effectuate and implement a health insurance exchange and shall accept requests for proposal to bid on such contracts; and

(g) Develop, adopt and implement a plan of operation and other governing documents to fulfill the requirements of this chapter.

(2) The exchange powers and authority shall be subject to the following limitations:

(a) The exchange shall not have the power to alter its own legal structure;

(b) The exchange shall be financially self-supporting and shall not request any financial support from the state and shall not have the power to tax or encumber state assets;

(c) (i) The exchange shall be a voluntary marketplace with the purpose of preserving individual choice and facilitating the informed selection and purchase of health benefit plans by eligible individuals, eligible employers and eligible employees. To that end the exchange portal shall be constructed to permit health insurance shoppers to anonymously input information to comparison shop, and only upon submission of an application require login names, passwords and identifying information.

(ii) Neither the exchange nor any agency of the state of Idaho shall require any person to use or participate in the exchange, nor have the authority to impose upon or collect from a person any penalty for failure or refusal to participate in the exchange or to purchase a health benefit plan or stand-alone dental plan.

(iii) The exchange shall provide as part of the application process for any person qualifying for premium assistance through the exchange a prominent warning advising purchasers to estimate income for the year carefully, that underestimating income can result in an overpayment of premium assistance and that an overpayment of premium assistance will likely result in owing the overpayment back to the internal revenue service.

(d) The exchange shall not prohibit a health carrier from participating in the exchange or prohibit a health benefit plan or stand-alone dental plan from being sold in the exchange so long as the health carrier or health benefit plan or stand-alone dental plan meets all requirements of applicable law and any requirements of the exchange consistent with this chapter;

(e) The exchange shall not prohibit or preclude a health carrier from offering insurance or a stand-alone dental plan outside the exchange;

(f) The exchange shall not prohibit a producer from participating in the exchange, and any producer participating in the exchange shall be entitled to payment for his services through written fee agreements with the individuals or small employers utilizing the services of said producer or through commissions offered by health carriers participating in the exchange;

(g) Before the exchange begins taking applications or collecting information from exchange users, the board shall certify to the director and governor that personal information collected from and about any person who voluntarily uses the exchange including, but not limited to, health care records and income, is and will continue to be secure;

(h) The exchange shall not inquire about the use, ownership, possession or storage of any firearm or ammunition by anyone using the exchange;

(i) In the event the patient protection and affordable care act (PPACA), P.L. 111-148, or any section thereof or rule enacted thereto, is declared unconstitutional or otherwise invalid by any federal court, unless such ruling is stayed by the court, the exchange shall immediately cease to enforce those affected provisions of the PPACA or rules;

(j) The state of Idaho shall not be liable for any obligations of the exchange; and

(k) The board shall not be liable for any obligations of the exchange. No member of the board shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under this chapter, unless such act or omission constitutes willful or wanton misconduct. The board may provide for indemnification of, and legal representation for, its members.

[41-6105, added 2013, ch. 170, sec. 1, p. 392; am. 2014, ch. 241, sec. 1, p. 608.]

41-6106. REPORT. (1) The exchange shall submit a written report of its activities and the condition of the exchange to the director, the governor and the director of the legislative services office for distribution to all legislators on or before January 31, 2014, and annually on or before each January 31 thereafter. The exchange shall also report to the appropriate senate and house of representatives germane committees on any changes to its bylaws or policies and any changes or updates from the federal department of health and human services (HHS) regarding essential health benefits or operation or conditions of the exchange on or before January 31, 2014, and annually on or before each January 31 thereafter.

(2) For any changes by the board to the fee schedule charged to exchange users or participants, the exchange shall, at the next legislative session, report to the appropriate senate and house of representatives germane committees on or before January 31.

[41-6106, added 2013, ch. 170, sec. 1, p. 394.]

41-6107. RELATION TO OTHER LAWS. The board and the exchange are entitled to rely upon work performed by the director and the director of the Idaho department of health and welfare in furtherance of the purpose of this chapter that are not otherwise inconsistent with their respective statutory duties and authority. Nothing in this chapter, and no action taken by the exchange pursuant to this chapter, shall be construed to preempt or supersede the authority of the director to regulate the business of insurance within this state pursuant to [title 41](#), Idaho Code, and administer and enforce rules adopted in accordance therewith.

[41-6107, added 2013, ch. 170, sec. 1, p. 394.]

41-6108. IDAHO CONTRACTORS IN A HEALTH INSURANCE EXCHANGE. Pursuant to sections [41-6104](#) and [41-6105](#), Idaho Code, the board shall, to the fullest extent practicable, enter into contracts with businesses conducting business in Idaho and employing citizens of this state to staff and provide support for the exchange.

[41-6108, added 2013, ch. 170, sec. 1, p. 394.]

41-6109. SEVERABILITY. The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

[41-6109, added 2013, ch. 170, sec. 1, p. 394.]