

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 248

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE HEALTH INSURANCE EXCHANGE; AMENDING TITLE 41, IDAHO CODE,
2 BY THE ADDITION OF A NEW CHAPTER 61, TITLE 41, IDAHO CODE, TO PROVIDE A
3 SHORT TITLE, TO STATE LEGISLATIVE PURPOSE AND INTENT, TO DEFINE TERMS,
4 TO ESTABLISH THE EXCHANGE AND THE BOARD, TO PROVIDE FOR POWERS AND
5 AUTHORITY OF THE EXCHANGE, TO PROVIDE FOR REPORTING, TO AUTHORIZE RE-
6 LIANCE BY THE EXCHANGE ON OTHER AGENCIES, TO PROVIDE THAT THE EXCHANGE
7 SHALL NOT PREEMPT THE DUTIES OF THE DEPARTMENT OF INSURANCE, TO PRO-
8 VIDE FOR THE PREFERENCE FOR IDAHO CONTRACTORS IN A HEALTH INSURANCE
9 EXCHANGE, TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended
13 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
14 ter 61, Title 41, Idaho Code, and to read as follows:

15 CHAPTER 61

16 IDAHO HEALTH INSURANCE EXCHANGE ACT

17 41-6101. SHORT TITLE. This chapter shall be known and may be cited as
18 the "Idaho Health Insurance Exchange Act."

19 41-6102. PURPOSE AND INTENT. It is the public policy of the state of
20 Idaho to actively resist federal actions that would limit or override state
21 sovereignty under the 10th amendment of the United States constitution.
22 Through this legislation, the state of Idaho asserts its sovereignty by
23 refusing to surrender decision-making authority over health care issues,
24 which are matters appropriately left to states and individual citizens.
25 The purpose of this chapter is to establish a state-created, market-driven
26 health insurance exchange that will facilitate the selection and purchase of
27 individual and employer health benefit plans. The creation of a state-based
28 health insurance exchange will provide an Idaho-specific solution that fits
29 the unique needs of the state of Idaho. Participation in the exchange is
30 voluntary in that no person or employer shall be required by this chapter to
31 purchase a health benefit plan through the exchange. Creation of the ex-
32 change and its operation is deemed a public purpose intended to enhance Idaho
33 residents' choice regarding options and access to health insurance.

34 41-6103. DEFINITIONS. For the purposes of this chapter:

35 (1) "Board" means those individuals who, acting as a board of direc-
36 tors of the exchange, govern and act for the exchange, pursuant to section
37 41-6104, Idaho Code.

38 (2) "Conflict of interest" means that by taking any action or making any
39 decision or recommendation on a matter within the authority of the board, a

1 member of the board, or a person within the member's household, or any entity
 2 with which the member, or a person within the member's household is associ-
 3 ated, would receive a pecuniary benefit or detriment, unless the pecuniary
 4 benefit or detriment would apply to the same degree to a class consisting of
 5 all persons within the particular class in this state.

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

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

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

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

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

16 41-6104. ESTABLISHMENT OF THE EXCHANGE AND THE BOARD. (1) There is
 17 hereby created an independent body corporate and politic to be known as the
 18 "Idaho Health Insurance Exchange." Said exchange may exercise the authority
 19 and powers conferred by this chapter and such exercise shall be deemed and
 20 held to be the performance of an essential public function.

21 (2) The exchange created by this chapter is not a state agency, shall
 22 not be subject to the purchasing statutes and rules of the state of Idaho or
 23 subdivisions of the state including, but not limited to, chapters 28 and 57,
 24 title 67, Idaho Code, and shall operate subject to the supervision and con-
 25 trol of its board.

26 (3) The board shall consist of nineteen (19) total members, with seven-
 27 teen (17) voting members. Subject to the provisions of this section, members
 28 of the board shall collectively offer expertise, knowledge and experience in
 29 health benefits administration, health care finance, health plan purchas-
 30 ing, health care delivery system administration, public health and health
 31 policy issues related to small employer and individual markets and the unin-
 32 sured. A majority of the board shall not collectively represent health car-
 33 riers and producers. The fourteen (14) voting members who are not members
 34 of the legislature shall be appointed to the board by, and serve at the plea-
 35 sure of, the governor. The members appointed to the board by the governor
 36 shall be subject to confirmation by the senate, provided that, upon appoint-
 37 ment, board members shall have full authority to exercise all the rights and
 38 duties, and participate in all decisions, required of the position. The sev-
 39 enteen (17) voting members of the board shall be appointed as follows:

40 (a) Three (3) members representing different health carriers appointed
 41 by the governor;

42 (b) Two (2) members representing producers appointed by the governor;

43 (c) Three (3) members representing individual consumer interests ap-
 44 pointed by the governor;

45 (d) Four (4) members representing small employer business interests
 46 appointed by the governor with, at the time of appointment:

47 (i) One (1) member representing small employer business inter-
 48 ests employing between one (1) and ten (10) employees;

1 (ii) One (1) member representing small employer business inter-
2 ests employing between eleven (11) and twenty-five (25) employ-
3 ees;

4 (iii) One (1) member representing small employer business inter-
5 ests employing twenty-six (26) or more employees; and

6 (iv) One (1) at-large member;

7 (e) Two (2) members representing health care providers appointed by the
8 governor;

9 (f) One (1) member of the house of representatives appointed by the
10 speaker of the house;

11 (g) One (1) member of the senate appointed by the president pro tempore;
12 and

13 (h) One (1) member of the legislature representing the minority party
14 in the legislature appointed by minority leadership.

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

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

23 (5) Whenever a member of the board has a conflict of interest on a matter
24 that is before the board, the member shall fully disclose it to the board,
25 abstain from any vote on the matter and shall also comply with any additional
26 requirements established pursuant to the plan of operation under section
27 41-6105, Idaho Code.

28 (6) Neither members of the board nor any other person working or per-
29 forming services for the exchange shall be:

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

33 (b) Eligible for or entitled to benefits from the public employee re-
34 tirement system of Idaho.

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

38 (8) All meetings of the board shall be held in accordance with the open
39 meeting law as provided for in chapter 23, title 67, Idaho Code, shall be held
40 in an open public forum, and every reasonable effort shall be made to make
41 such meetings televised or streamed in video and audio format.

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

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

47 (11) Premium rates charged by a health carrier for a health benefit plan
48 or stand-alone dental plan offered in the exchange shall be based upon Idaho
49 rating areas established by the director consistent with 42 U.S.C. section
50 300gg, et seq.

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

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

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

9 (c) Assess and collect fees from participating health carriers, ex-
10 change users and receive funds from any other source, that shall be used
11 solely for the purposes of this chapter. The exchange shall not be sub-
12 ject to income tax imposed by the state of Idaho under chapter 30, title
13 63, Idaho Code;

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

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

17 (f) Enter into contracts to effectuate and implement a health insur-
18 ance exchange and shall accept requests for proposal to bid on such con-
19 tracts; and

20 (g) Develop, adopt and implement a plan of operation and other govern-
21 ing documents to fulfill the requirements of this chapter.

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

24 (a) The exchange shall not have the power to alter its own legal struc-
25 ture;

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

29 (c) The exchange shall be a voluntary marketplace with the purpose of
30 preserving individual choice and facilitating the informed selection
31 and purchase of health benefit plans by eligible individuals, eligible
32 employers and eligible employees. Neither the exchange nor any agency
33 of the state of Idaho shall require any person to use or participate in
34 the exchange, nor have the authority to impose upon or collect from a
35 person any penalty for failure or refusal to participate in the exchange
36 or to purchase a health benefit plan or stand-alone dental plan;

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

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

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

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

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

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

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

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

22 41-6106. REPORT. (1) The exchange shall submit a written report of its
23 activities and the condition of the exchange to the director, the governor
24 and the director of the legislative services office for distribution to all
25 legislators on or before January 31, 2014, and annually on or before each
26 January 31 thereafter. The exchange shall also report to the appropriate
27 senate and house of representatives germane committees on any changes to its
28 bylaws or policies and any changes or updates from the federal department of
29 health and human services (HHS) regarding essential health benefits or oper-
30 ation or conditions of the exchange on or before January 31, 2014, and annu-
31 ally on or before each January 31 thereafter.

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

36 41-6107. RELATION TO OTHER LAWS. The board and the exchange are enti-
37 tled to rely upon work performed by the director and the director of the Idaho
38 department of health and welfare in furtherance of the purpose of this chap-
39 ter that are not otherwise inconsistent with their respective statutory du-
40 ties and authority. Nothing in this chapter, and no action taken by the ex-
41 change pursuant to this chapter, shall be construed to preempt or supersede
42 the authority of the director to regulate the business of insurance within
43 this state pursuant to title 41, Idaho Code, and administer and enforce rules
44 adopted in accordance therewith.

45 41-6108. IDAHO CONTRACTORS IN A HEALTH INSURANCE EXCHANGE. Pursuant
46 to sections 41-6104 and 41-6105, Idaho Code, the board shall, to the fullest
47 extent practicable, enter into contracts with businesses conducting busi-

1 ness in Idaho and employing citizens of this state to staff and provide sup-
2 port for the exchange.

3 41-6109. SEVERABILITY. The provisions of this act are hereby declared
4 to be severable, and if any provision of this act or the application of such
5 provision to any person or circumstance is declared invalid for any reason,
6 such declaration shall not affect the validity of the remaining portions of
7 this act.

8 SECTION 2. An emergency existing therefor, which emergency is hereby
9 declared to exist, this act shall be in full force and effect on and after its
10 passage and approval. Provided however, that should the Federal Department
11 of Health and Human Services (HHS) and/or the United States Congress change
12 both the establishment date and the eligibility limitation date for the ex-
13 change, the Governor shall, upon his determination that such events have oc-
14 curred, issue a proclamation declaring that Idaho will not be obligated to
15 comply until the new dates are set by HHS and/or the United States Congress.
16 The Governor shall file such proclamation with the Secretary of State.