

IN THE SENATE

SENATE BILL NO. 1042

BY COMMERCE AND HUMAN RESOURCES 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 AND TO PRO-
8 VIDE SEVERABILITY; AND DECLARING AN EMERGENCY.
9

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

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

14 CHAPTER 61

15 IDAHO HEALTH INSURANCE EXCHANGE ACT

16 41-6101. SHORT TITLE. This chapter shall be known and may be cited as
17 the "Idaho Health Insurance Exchange Act."

18 41-6102. PURPOSE AND INTENT. It is the public policy of the state of
19 Idaho to actively resist federal actions that would limit or override state
20 sovereignty under the 10th amendment of the United States constitution.
21 Through this legislation, the state of Idaho asserts its sovereignty by
22 refusing to surrender decision-making authority over health care issues,
23 which are matters appropriately left to states and individual citizens.
24 The purpose of this chapter is to establish a state-created, market-driven
25 health insurance exchange that will facilitate the selection and purchase of
26 individual and employer health benefit plans. The creation of a state-based
27 health insurance exchange will provide an Idaho-specific solution that fits
28 the unique needs of the state of Idaho. Participation in the exchange is
29 voluntary in that no Idaho citizen or employer shall be required by this
30 chapter to purchase a health benefit plan through the exchange. Creation of
31 the exchange and its operation is deemed a public purpose intended to enhance
32 Idaho residents' choice regarding options and access to health insurance.

33 41-6103. DEFINITIONS. For purposes of this chapter:

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

37 (2) "Conflict of interest" means that by taking any action or making any
38 decision or recommendation on a matter within the authority of the board, a
39 member of the board, or a person within the member's household, or any entity

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

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

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

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

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

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

15 41-6104. ESTABLISHMENT OF THE EXCHANGE AND THE BOARD. (1) There is
 16 hereby created an independent body corporate and politic to be known as the
 17 "Idaho Health Insurance Exchange." Said exchange may exercise the authority
 18 and powers conferred by this chapter and such exercise shall be deemed and
 19 held to be the performance of an essential public function.

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

25 (3) The board shall consist of sixteen (16) total members, with four-
 26 teen (14) voting members. Subject to the provisions of this section, members
 27 of the board shall collectively offer expertise, knowledge and experience in
 28 health benefits administration, health care finance, health plan purchas-
 29 ing, health care delivery system administration, public health and health
 30 policy issues related to small employer and individual markets and the unin-
 31 sured. A majority of the board shall not collectively represent health car-
 32 riers and producers. The fourteen (14) voting members shall be appointed to
 33 the board by, and serve at the pleasure of, the governor. The members ap-
 34 pointed to the board by the governor shall be subject to confirmation by the
 35 senate, provided that, upon appointment board members shall have full au-
 36 thority to exercise all the rights and duties, and participate in all deci-
 37 sions, required of the position. In selecting the fourteen (14) voting mem-
 38 bers of the board, the governor shall appoint:

39 (a) Three (3) members representing different health carriers;

40 (b) Two (2) members representing producers;

41 (c) Three (3) members representing individual consumer interests;

42 (d) Four (4) members representing small employer business interests
 43 with, at the time of appointment:

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

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

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

3 (iv) One (1) at-large member; and

4 (e) Two (2) members representing health care providers.

5 The director or his designee and the director of the state department of
6 health and welfare or his designee shall each serve as ex officio nonvoting
7 members of the board. In the event of a deadlock upon a matter to be decided
8 by the board, the director of the state department of health and welfare or
9 his designee shall be entitled to vote.

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

15 (5) Whenever a member of the board has a conflict of interest on a matter
16 that is before the board, the member shall fully disclose it to the board,
17 abstain from any vote on the matter and shall also comply with any additional
18 requirements established pursuant to the plan of operation under section
19 41-6105, Idaho Code.

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

22 (a) Considered employees of the state of Idaho by virtue of their ser-
23 vice on the board or performance of services for the exchange; or

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

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

29 (8) All meetings of the board shall be held in accordance with the open
30 meeting law as provided for in chapter 23, title 67, Idaho Code.

31 (9) The board shall contract for an annual audit of the exchange by an
32 independent third party.

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

35 41-6105. POWERS AND AUTHORITY OF THE EXCHANGE. (1) Unless otherwise
36 required by this chapter, in the discretion of the board, the exchange shall
37 have the powers and authority to:

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

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

43 (c) Assess and collect fees from participating health carriers, ex-
44 change users or participants and receive funds from any other source,
45 that shall be used solely for the purposes of this chapter. The exchange
46 shall not be subject to income tax imposed by the state of Idaho under
47 chapter 30, title 63, Idaho Code;

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

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

3 (f) Enter into contracts to effectuate and implement a health insurance
4 exchange; and

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

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

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

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

14 (c) The exchange shall be a voluntary marketplace with the purpose of
15 preserving individual choice and facilitating the informed selection
16 and purchase of health benefit plans by eligible individuals, eligible
17 employers and eligible employees. Neither the exchange nor any agency
18 of the state of Idaho shall require any person to use or participate in
19 the exchange, nor have the authority to impose upon or collect from a
20 person any penalty for failure or refusal to participate in the exchange
21 or to purchase a health benefit plan or stand-alone dental plan;

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

28 (e) The exchange shall not attempt to prohibit or preclude a health car-
29 rier from offering insurance or a stand-alone dental plan outside the
30 exchange;

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

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

39 (h) The board shall not be liable for any obligations of the exchange.
40 No member of the board shall be liable, and no cause of action of any
41 nature may arise against them, for any act or omission related to the
42 performance of their powers and duties under this chapter, unless such
43 act or omission constitutes willful or wanton misconduct. The board may
44 provide for indemnification of, and legal representation for, its mem-
45 bers.

46 41-6106. REPORT. The exchange shall submit a written report of its ac-
47 tivities and the condition of the exchange to the director, the governor and
48 the director of the legislative services office for distribution to all leg-

1 islators on or before January 31, 2014, and annually on or before each Jan-
2 uary 31 thereafter.

3 41-6107. RELATION TO OTHER LAWS. The board and the exchange are enti-
4 tled to rely upon work performed by the director and the director of the Idaho
5 department of health and welfare in furtherance of the purpose of this chap-
6 ter that are not otherwise inconsistent with their respective statutory du-
7 ties and authority. Nothing in this chapter, and no action taken by the ex-
8 change pursuant to this chapter, shall be construed to preempt or supersede
9 the authority of the director to regulate the business of insurance within
10 this state pursuant to title 41, Idaho Code, and administer and enforce rules
11 adopted in accordance therewith.

12 41-6108. SEVERABILITY. The provisions of this act are hereby declared
13 to be severable and if any provision of this act or the application of such
14 provision to any person or circumstance is declared invalid for any reason,
15 such declaration shall not affect the validity of the remaining portions of
16 this act.

17 SECTION 2. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after its
19 passage and approval.