

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 149

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO SELF-FUNDED HEALTH CARE PLANS; AMENDING SECTION 41-4003, IDAHO
2 CODE, TO REVISE PROVISIONS REGARDING REGISTRATION OF SELF-FUNDED
3 PLANS; AMENDING SECTION 41-4004, IDAHO CODE, TO REVISE PROVISIONS RE-
4 GARDING PLAN REQUIREMENTS; AND AMENDING SECTION 41-4010, IDAHO CODE, TO
5 PROVIDE FOR A CERTAIN WAIVER AND TO MAKE A TECHNICAL CORRECTION.
6

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

8 SECTION 1. That Section 41-4003, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 41-4003. REGISTRATION REQUIRED -- EXEMPTIONS -- NOT SUBJECT TO INSUR-
11 ANCE CODE. (1) No person shall offer or operate a self-funded plan in this
12 state unless the plan is registered with the director as hereinafter pro-
13 vided.

14 (2) No registration shall be required of:

15 (a) Any self-funded plan established for the sole purpose of funding
16 the dollar amount of a deductible clause contained in the provisions of
17 an insurance contract issued by an insurer duly authorized to transact
18 disability insurance in this state if the deductible does not exceed an
19 amount applicable to each beneficiary of five thousand dollars (\$5,000)
20 per annum and the total of all obligations to all beneficiaries in-
21 sured under the plan arising out of the application of such a deductible
22 does not exceed the aggregate amount of five hundred thousand dollars
23 (\$500,000) in any one (1) year.

24 (b) Any plan established and maintained for the purpose of complying
25 with any worker's compensation law or unemployment compensation dis-
26 ability insurance law.

27 (c) Any plan administered by or for the federal government ~~or~~, a fed-
28 eral agency thereof, or any county of this the state, provided that any
29 county that has an unregistered self-funded plan in effect on and prior
30 to July 1, 2019, shall register with the director but shall be exempt
31 from requirements in this chapter conflicting with the existing plan
32 for a period of five (5) years.

33 (d) Any plan which is primarily for the purpose of providing first aid
34 care and treatment by an employer for injury or sickness of employees
35 while engaged in their employment.

36 (e) Any self-funded plan offering only dental and/or vision bene-
37 fits, where such benefits are limited to no more than a total of five
38 thousand dollars (\$5,000) per beneficiary per year. If self-funded
39 dental and/or vision benefits are offered in conjunction with any other
40 self-funded plan for disability or health benefits, the entire benefits
41 are subject to all applicable provisions of chapter 40, title 41, Idaho
42 Code, including registration.

1 (3) Plans that are registered under chapter 40, title 41, Idaho Code,
2 shall not be deemed to be engaged in the business of insurance and shall not
3 be subject to provisions of the Idaho insurance code except as expressly
4 provided in this chapter. A plan required to register with the department
5 that operates in this state without registering under this chapter shall be
6 deemed to be engaged in the business of insurance without authorization and
7 any person offering or operating an unregistered plan shall be deemed to be
8 transacting insurance without proper licensing and subject to all sanctions
9 as provided by law.

10 (4) Any self-funded plan providing benefits to more than one (1) em-
11 ployer shall provide to each employer participant and to each prospective
12 employer participant written notice that the plan is not insurance and does
13 not participate in the Idaho life and health guaranty association. Any self-
14 funded plan providing benefits to students of a postsecondary educational
15 institution shall provide to each student participant and to each prospec-
16 tive student participant written notice that the plan is not insurance and
17 does not participate in the Idaho life and health guaranty association. The
18 notice shall also be included as part of all marketing materials used by or on
19 behalf of the plan.

20 (5) Any plan registered as a single employer plan or as a multiple em-
21 ployer welfare plan shall not operate as or be registered as a postsecondary
22 educational institution student health benefit plan. Any plan registered as
23 a postsecondary educational institution student health benefit plan shall
24 not operate as or be registered as a single employer plan or as a multiple em-
25 ployer welfare plan.

26 SECTION 2. That Section 41-4004, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 41-4004. PLAN REQUIREMENTS. (1) The director shall not register any
29 self-funded plan under this chapter unless the following requirements are
30 met:

31 (a) The plan must require all contributions to be paid in advance and to
32 be deposited in and disbursed from a trust fund duly created by a written
33 irrevocable trust agreement between the employer or employers and the
34 trustee, or between the postsecondary educational institution and the
35 trustee, that meets the terms of this chapter.

36 (b) The plan shall appoint a trustee who demonstrates the character,
37 fitness and competence to function in such role and whose function shall
38 be to competently manage and administer the trust fund and plan.

39 (c) With regard to single employer plans or multiple employer welfare
40 plans, the plans must require that employers contribute to the trust
41 fund, and that all contributions by employees, if any, shall be by regu-
42 lar periodic payroll deductions, except as to contributions made by an
43 employee during his absence from such employment for such period as the
44 plan may reasonably provide.

45 (d) The plan must provide that the trustee shall furnish to each em-
46 ployee-beneficiary or each student-beneficiary a copy of the plan,
47 which shall include a written statement or schedule adequately and
48 clearly stating all benefits currently provided under the plan, as well

1 as all applicable restrictions, limitations, and exclusions, and the
2 procedure for filing a claim for benefits.

3 (e) The plan shall require that the trust fund be actuarially sound.
4 Assets and income of the trust fund shall at all times be reasonably ade-
5 quate to provide for full payment of all benefits promised to beneficia-
6 raries by the plan and to cover all other costs of operation. The initial
7 contribution rates shall be calculated by a qualified actuary and shall
8 include a reasonable provision for adverse deviation and a reasonable
9 contribution to surplus.

10 (f) Before the registration by the department of the self-funded plan,
11 the department shall verify that an amount equal to fifty percent (50%)
12 of the qualified actuary's estimate of ~~the~~ any minimum surplus require-
13 ments, as provided in section 41-4010(3), Idaho Code, after twelve (12)
14 months of operation, be deposited in the trust fund, in addition to the
15 first month's contributions for all beneficiaries.

16 (2) After registration of the plan, in addition to the required quar-
17 terly and annual filings and other requirements as provided in this chapter,
18 the trustee shall file the following documents with the director for his re-
19 view and approval not less than thirty (30) days before the effective date
20 thereof:

21 (a) An actuarial study as described in section 41-4005(2)(e), Idaho
22 Code, calculating new rates for the next plan year or more frequent pe-
23 riod if there are any midterm rate changes;

24 (b) Any changes in the policy form, benefits or summary plan descrip-
25 tion;

26 (c) Any amendments or changes made to the stop-loss agreement or agree-
27 ments, including change of carriers;

28 (d) Any amendments or changes made to administrative, service or man-
29 agement agreements;

30 (e) Any amendments or changes to the fidelity bond or other coverage the
31 director deemed equivalent pursuant to section 41-4014(3), Idaho Code;

32 (f) Any amendments or changes to the trust agreement; and

33 (g) Any change in the trustee or trustees, officers or management of the
34 trust, which notice shall include biographical affidavits of any new
35 trustee, officer or management personnel.

36 (3) The trustee shall notify the director immediately if the trustee
37 learns or receives information that indicates that the surplus of the trust
38 falls below the minimum surplus requirements.

39 SECTION 3. That Section 41-4010, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 41-4010. RESERVES AND SURPLUS. (1) The trustee of a self-funded plan
42 shall establish and maintain in the trust fund the following reserves:

43 (a) A reserve in an amount as certified by a qualified actuary as being
44 necessary for payment of claims liability. The reserve shall be reason-
45 ably adjusted on a quarterly basis in an amount as determined by a quali-
46 fied actuary or other qualified person if authorized by the director.

47 (b) If, under the plan, periodic contributions to the trust fund have
48 been paid in advance or are payable less frequently than monthly, there
49 shall be a reserve for unearned contributions as computed pro rata on

1 the basis of the unexpired portion of the period for which the contribu-
2 tion has been paid.

3 (c) If future claims payments plus future costs of operation are
4 greater than future contributions plus current reserves, there shall be
5 a reserve in an amount equal to future claims payments plus future costs
6 of operation, less future contributions, less current reserves.

7 (2) In any determination of the financial condition of the trust fund,
8 the claims reserve, reserve for unearned contributions and contribution de-
9 ficiency reserve shall constitute liabilities.

10 (3) (a) In addition to reserves required by this section, a self-funded
11 plan shall establish and maintain in its trust fund surplus equal to at
12 least:

13 (a) The equivalence of three (3) months of contributions for the
14 current plan year; or

15 (b) One hundred ten percent (110%) of the difference between the
16 total dollar aggregate stop-loss attachment point plus costs of
17 operation and the total dollar expected contributions for the cur-
18 rent plan year.

19 (c) Paragraphs (a) and (b) of this subsection notwithstanding, a pub-
20 lic postsecondary educational institution shall instead be required to
21 establish and maintain in its trust fund surplus an amount equal to at
22 least thirty percent (30%) of the unpaid claims liability of the plan.

23 (c) Upon request of a self-funded plan, the director may annually waive
24 the surplus requirement provided in paragraph (a) or (b) of this subsec-
25 tion if:

26 (i) The plan or trust carries insurance providing aggregate cov-
27 erage and specific coverage;

28 (ii) The plan, in its first year of operation, receives periodic
29 contributions, at minimum on a monthly basis, at an amount at least
30 equal to the point at which the insurance providing aggregate cov-
31 erage must cover at least one hundred percent (100%) of the plan's
32 liability, as certified by a qualified actuary; and

33 (iii) In its second and each subsequent year of operation, the
34 plan:

35 1. Continues to provide stop-loss coverage as described in
36 subparagraph (i) of this paragraph; or

37 2. Is funded, at minimum on a monthly basis, at an
38 amount equal to at least one hundred percent (100%) of the
39 self-funded plan's liability, less any surplus as defined in
40 section 41-4002, Idaho Code, from previous years.

41 The director may also waive any or all requirements provided in subpara-
42 graphs (i) through (iii) of this paragraph, provided that the plan main-
43 tains reserves and surplus, as defined in section 41-4002, Idaho Code,
44 of at least the amount certified annually by a qualified actuary as suf-
45 ficient without aggregate coverage.

46 (4) A surplus note that has been approved by the director in a form and
47 as defined in section 41-2841, Idaho Code, may be used to fund surplus and
48 shall not be accounted as a liability.

49 (5) Up to one-third (1/3) of the surplus required by this section may be
50 funded by a clean, irrevocable letter of credit, in a form acceptable to the

1 director, issued in favor of the trust fund by a federally or state-chartered
2 bank having a branch office in Idaho. Such irrevocable letter of credit can-
3 not be guaranteed by pledge of any of the plan assets. The funding cannot be
4 in the form of prepaid contributions or other loan or associated with an off-
5 setting liability.

6 (6) A newly formed plan with no prior operating history shall meet the
7 minimum surplus requirements no later than twelve (12) months after the date
8 of initial operation. The director may extend for a reasonable period not
9 to exceed twelve (12) additional months, provided that the plan is meeting
10 all other provisions of this chapter. For plans registered with the depart-
11 ment and in existence on the effective date of this law, such plans shall have
12 twenty-four (24) months from the effective date of this law in which to in-
13 crease their surplus level to comply with the requirements of subsection (3)
14 of this section.

15 (7) The trust fund shall maintain the minimum surplus requirements at
16 all times throughout the year.