

TITLE 41
INSURANCE

CHAPTER 37
IDAHO HOSPITAL LIABILITY TRUST ACT

41-3701. DECLARATION OF PURPOSE. It is the purpose of this act to authorize the establishment, maintenance, administration and operation of hospital trusts, established by agreement of any hospitals of this state to insure against general public liability claims, to provide standards for financial soundness of such trusts and to protect the interests of the members covered thereby. The legislature of the state of Idaho declares that the existence and operation of such hospital trusts are matters of legislative concern, vitally affecting the rights and interests of the citizens of this state.

[41-3701, added 1977, ch. 204, sec. 2, p. 557.]

41-3702. DEFINITIONS. For the purpose of this act unless context otherwise requires:

(1) "Director" is the director of the department of insurance of this state.

(2) "Administrator" is a person, if other than the trustee, employed by the trustee to administer a hospital trust.

(3) "Trustee" is the trustee, whether a single or multiple trustee, of the hospital trust.

(4) "Person" is any individual, corporation, association, firm, syndicate, organization or other entity.

(5) "Contribution" is the amount paid or payable by a member into a trust fund.

(6) "Hospital trust" is any trust established pursuant to the provisions of this act by agreement of any hospitals, properly licensed by the state of Idaho, with such hospitals as grantors and beneficiaries of the trust, for the purpose of insuring against general public liability claims based upon acts or omissions of such hospitals, including but not limited to, claims based upon malpractice. A hospital trust may also insure against general public liability claims, including but not limited to, malpractice claims based upon acts or omissions of any employee, authorized volunteer worker or member of a medical staff committee, while acting within the scope of his duties as such, of a member hospital.

(7) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four (24) hours in any week of two (2) or more nonrelated individuals suffering from illness, disease, injury, deformity, or requiring care because of old age, or a place devoted primarily to providing for not less than twenty-four (24) hours in any week of obstetrical or other medical or nursing care for two (2) or more nonrelated individuals. The term "hospital" includes public health centers in general, tuberculosis, mental, chronic disease and other types of hospitals, and related facilities, such as laboratories, out-patient departments, hospital-affiliated nursing homes, nurses' homes and training facilities, and central service facilities operated in connection with hospitals.

[41-3702, added 1977, ch. 204, sec. 2, p. 557.]

41-3703. TRUST AGREEMENTS AMONG A GROUP OF HOSPITALS AUTHORIZED. The establishment, maintenance, administration and operation of any trust, established by agreement of hospitals, properly licensed by the state of Idaho, with such hospitals as grantors and beneficiaries, for the purpose of insuring against general public liability claims based upon acts or omissions of such hospitals, including but not limited to, claims based upon malpractice, is hereby authorized. A hospital trust may also insure against general public liability claims, including but not limited to, malpractice claims based upon acts or omissions of any employee, authorized volunteer worker or member of a medical staff committee, while acting within the scope of his duties as such, of a member hospital. Such hospitals may, by trust agreement among themselves and a trustee or trustees of their selection, specify the terms, conditions and provisions of such a trust, upon compliance with the conditions set forth in this act.

[41-3703, added 1977, ch. 204, sec. 2, p. 558.]

41-3704. TITLE TO PROPERTY OF TRUSTS -- LIABILITY OF TRUSTS AND TRUSTEES. The trustee of trusts established pursuant to this act shall hold the legal title to all property at any time belonging to the trust. They shall have control over such property as well as the control and management of the business and affairs of the trust. Liability to third persons for any act, omission or obligation of a trustee of a trust, when acting in such capacity, shall extend to the whole of the trust estate, or so much thereof as may be necessary to discharge such obligation, but no trustee shall be personally liable for such act, omission or obligation, except as provided herein. The trustee shall have such powers as to the investment of the trust estate as may be set out in the declaration of trust and in section [41-3712](#), Idaho Code, without regard to the type of investments to which trustees generally are restricted by the provisions of [title 68](#), Idaho Code. In addition, the trustee shall have any powers, whether conferred upon them by the trust agreement or otherwise, to perform all acts necessary or desirable to the conduct of the business of a public liability insurer.

[41-3704, added 1977, ch. 204, sec. 2, p. 558.]

41-3705. OBLIGATION OF PARTICIPATING HOSPITALS LIMITED. No hospital which is a participant in a hospital trust as grantor, member, beneficiary or otherwise, shall be liable or obligated to the trust, to the trustee, to any grantor, member or beneficiary, to any creditor of the trust, or to any other person by virtue of its participation other than for the payment of its full agreed contribution to the trust in accordance with the trust agreement. No participating hospital shall incur any other liability of any nature whatever because of or arising out of its participation in a hospital trust.

[41-3705, added 1977, ch. 204, sec. 2, p. 559.]

41-3706. REGISTRATION. Every hospital trust established pursuant to the provisions of this act shall be registered with the director as hereinafter provided.

[41-3706, added 1977, ch. 204, sec. 2, p. 559.]

41-3707. QUALIFICATIONS FOR REGISTRATION. The director shall not register a hospital trust which is not qualified therefor. To be qualified, a hospital trust:

(1) Must require all contributions to be paid in advance and to be deposited in and disbursed from a trust fund duly created and existing under an adequate written trust agreement between the hospitals.

(2) Must have, or provide for, a trustworthy and responsible trustee, and for competent administration of the trust fund and plan.

(3) Must provide that the administrator or trustee on behalf of the trust fund, as the case may be, shall furnish to each member of the trust a written statement adequately and clearly stating all rights and obligations of the members of the trust, together with all applicable restrictions, limitations, and exclusions, and the procedure for filing a claim.

(4) Must be actuarially sound; that is, assets, income and other financial resources of the trust fund must be adequate under reasonable estimates for payment of all claims, claims adjustment expenses, taxes, expenses and other obligations.

(5) Must otherwise be in compliance with this chapter.

[41-3707, added 1977, ch. 204, sec. 2, p. 559.]

41-3708. APPLICATION FOR REGISTRATION -- FEE. (1) Application for registration of a hospital trust shall be made to the director, on forms furnished and designed by him for the purpose of eliciting information as to whether the trust is qualified for registration. The application shall be signed and verified by at least one (1) of the trustees. If the trustee is a corporation, the verification shall be by a duly authorized corporate officer.

(2) The application shall be accompanied by:

(a) A copy of the trust agreement under which the trust fund is to exist and operate;

(b) A copy of the proposed written statement referred to in subsection (3) of section [41-3707](#), Idaho Code;

(c) A written statement of reasonably projected income and disbursements of the trust fund for the twelve (12) month period commencing with date of application and showing also the amount reserved and financial resources available as of the end of such period for claims incurred and not paid or incurred and not reported;

(d) A current certified audited financial statement;

(e) Such other relevant documentation and information as the director may reasonably require.

(3) At time of filing the application, the applicant shall pay to the director a nonrefundable filing fee as provided for by regulation.

(4) The director shall transmit and account for all fees received by him hereunder as provided for in section [41-406](#), Idaho Code.

[41-3708, added 1977, ch. 204, sec. 2, p. 560; am. 1984, ch. 23, sec. 10, p. 43.]

41-3709. GRANT OR DENIAL OF REGISTRATION. (1) The director shall act upon an application for registration of a hospital trust with all reasonable promptness. He may make such investigation of the proposal as he deems advisable. If the director finds that the application is complete and that the plan meets the qualifications stated in section [41-3707](#), Idaho Code, he

shall issue and deliver a certificate of registration in appropriate form to the applicant; otherwise, the director shall refuse to register the plan and shall give written notice of such refusal to the applicant, stating the reasons therefor.

(2) All procedures and policies concerning the grant or denial of registration of any hospital trust are subject to the provisions of [chapter 52, title 67](#), Idaho Code, as well as the rules of practice and procedure of the department of insurance.

[41-3709, added 1977, ch. 204, sec. 2, p. 560.]

41-3710. TRUST FUND -- POWERS. The trust fund of a hospital trust shall have power:

- (1) To have and use an appropriate descriptive name;
- (2) To sue and be sued in its own name;
- (3) To contract in its own name. All such contracts in writing shall be signed by the trustee of the trust, and if there is more than one (1) trustee, the contract may be so executed by one (1) trustee if so authorized by all trustees;
- (4) To borrow money and give security therefor; and
- (5) To engage exclusively in transactions authorized or required by this act, or reasonably incidental thereto.

[41-3710, added 1977, ch. 204, sec. 2, p. 561.]

41-3711. TRUST FUND -- LIABILITY. (1) The trust fund of a hospital trust shall be legally liable for payment of all appropriate claims to the extent provided for in the trust agreement.

(2) Funds in the trust fund are fiduciary funds and are not liable for any obligation of a member of the trust except those obligations arising from general public liability claims as more specifically provided for herein.

[41-3711, added 1977, ch. 204, sec. 2, p. 561.]

41-3712. INVESTMENT OF TRUST FUND. (1) The trustee may invest reserves and other funds available for the purpose in the trust fund of a hospital trust in the following kinds of investments only:

- (a) General obligations of the United States government, or of any state, district, commonwealth, or territory of the United States, or of any municipality, county, or other political subdivision or agency thereof.
- (b) Obligations, the payment of principal and interest of which is guaranteed by any such government or agency.
- (c) Corporate bonds and similar obligations meeting the requirements specified for investment of funds of insurers under section [41-711](#), Idaho Code.
- (d) Collateral loans, payment of principal and interest of which is adequately secured by securities in which the trust fund could lawfully invest direct.
- (e) Deposits, savings accounts, and share accounts in established banks and savings and loan associations located in the United States.

(2) The trustee is expressly prohibited from investing trust fund mon-
eys in:

- (a) Any loan to or security of any member of the trust.

(b) Real estate or loans thereon.

(c) Any personal loan, other than a collateral loan referred to in subsection (1) (d) above. [,] but subject to subdivision (a) of this subsection (2).

(3) All such investments shall be made and held in the name of the trust fund, and the interest and yield thereon shall inure to the account of the trust fund.

(4) No investment shall be made unless authorized in writing by the trustee and so shown in the records of the trust fund.

(5) Any person who authorizes any investment of trust fund moneys in violation of this section shall, in addition to other penalty therefor, be liable for all loss suffered by the trust fund on account of the investment.

(6) No investment made in violation of this section shall constitute an "asset" in any determination of the financial condition of the trust fund.

[41-3712, added 1977, ch. 204, sec. 2, p. 561.]

41-3713. RESERVES. (1) A hospital trust shall establish and maintain the following reserves or financial resources, including but not limited to, bank credit:

(a) An amount sufficient for payment of claims against the trust fund, including both claims reported and not yet paid and claims incurred but not yet reported.

(b) An amount for unearned contributions as computed pro rata on the basis of the unexpired portion of the period for which the contribution has been paid.

(c) An amount adequate under reasonable estimates for payment of all claims, claims adjustment expenses, taxes, expenses and other obligations.

(2) In any determination of the financial condition of the trust fund, the reserves or financial resources relating to subsections (a), (b) and (c) above shall constitute liabilities.

[41-3713, added 1977, ch. 204, sec. 2, p. 562.]

41-3714. RECORDS AND ACCOUNTS -- ANNUAL STATEMENT. (1) The trustees of a hospital trust shall cause full and accurate records and accounts to be entered and maintained covering all financial transactions and affairs of the trust fund.

(2) Within sixty (60) days after close of calendar year, the trustee shall make an annual statement in writing summarizing the financial transactions of the trust fund for such calendar year and its financial condition at the end of such year in accordance with this act and generally accepted and applicable accounting principles. The statement shall otherwise be in form and require information as prescribed by the director, and the financial information therein shall be certified by the accountant by whom such information was prepared and audited. The trustee shall promptly deliver a copy of the statement to each member of the trust, and keep a copy thereof on file in the business office of the trust.

(3) On or before expiration of such sixty (60) day period the trustee shall cause an original of the annual statement to be filed with the director. The trust fund shall pay a filing fee as provided for by regulation.

(4) The director shall transmit and account for all fees received by him hereunder, as provided for in section [41-406](#), Idaho Code.

[41-3714, added 1977, ch. 204, sec. 2, p. 562; am. 1984, ch. 23, sec. 11, p. 43.]

41-3715. TAXES. (1) Each hospital trust shall be subject to [chapter 4, title 41](#), Idaho Code, as it pertains to premium tax; provided that, for this purpose, total contributions paid by a member into the trust fund shall be deemed to be premiums; and further provided that, for the purposes of section [41-404](#), Idaho Code, a hospital trust shall be deemed to be an insurer other than a life insurance company.

(2) The state of Idaho hereby preempts the field of imposing excise, privilege, franchise, income, license and similar taxes, licenses and fees upon hospital trust funds; and no county, city, municipality, district, school district, or other political subdivision or agency of Idaho shall levy upon hospital trust funds any such tax, license or fee additional to such as are levied by the legislature of Idaho in this act.

(3) The tax levied herein, together with the fees provided for in this act shall be in lieu of any and all income taxes and other excise taxes, licenses and fees payable to the state of Idaho.

[41-3715, added 1977, ch. 204, sec. 2, p. 563; am. 1984, ch. 253, sec. 2, p. 604; am. 1988, ch. 366, sec. 6, p. 1081.]

41-3716. EXAMINATION OF BOOKS, RECORDS AND ACCOUNTS. (1) The books, records, accounts and affairs of a hospital trust shall be subject to examination by the director, by competent examiners duly authorized by him in writing, at such times or intervals as the director deems advisable. The purposes of the examination shall be to determine compliance of the trust with applicable laws, financial condition and actuarial adequacy of the trust fund, and as to other factors materially related to the trust's management and operation.

(2) The trustee shall make the books, records and accounts of the trust and trust fund available to the examiner and otherwise facilitate the examination.

(3) The examiner shall conduct the examination expeditiously, make his report of the examination in writing, and deliver a copy thereof to the trustee and the director. The trustee shall have two (2) weeks after receipt of the report within which to recommend to the director such corrections or changes therein as the trustee may deem appropriate. After making such corrections or changes, if any, as he deems proper, the director shall file the report in his office as a document open to public inspection, and deliver to the trustee a copy of the report as so corrected or changed.

(4) At the direction of the director, the costs of the examination shall be borne by the trust fund of the hospital trust in accordance with section [41-228](#), Idaho Code.

[41-3716, added 1977, ch. 204, sec. 2, p. 563; am. 2001, ch. 85, sec. 10, p. 218.]

41-3717. TRUSTEES -- ADMINISTRATORS -- BONDING. (1) Either an individual or a corporation may be a trustee of the trust fund. Either an individual, firm, or corporation may be an administrator of a hospital trust.

(2) A member of the trust shall be neither a trustee nor the administrator, but this provision shall not be deemed to prohibit an individual who is otherwise an employee of such a member from being trustee or administrator.

(3) The trustee shall cause all individuals handling receipts and disbursements for the trust fund to be bonded at all times under a fidelity bond issued by a surety insurer authorized to transact such insurance in this state. The bond shall be in favor of the trust fund and for such aggregate penalty amount, not less than twenty-five thousand dollars (\$25,000), as the director may deem reasonably advisable in relation to amount of funds to be so handled. The bond shall be noncancellable except upon not less than thirty (30) days advance notice in writing to the trustee and the director. The cost of the bond shall be borne by the trust fund.

[41-3717, added 1977, ch. 204, sec. 2, p. 564.]

41-3718. PROHIBITED PECUNIARY INTERESTS IN PLAN MANAGEMENT. (1) No trustee, administrator, or other person having responsibility for the management of a hospital trust or the investment or other handling of trust funds shall:

(a) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument, other than salary or other similar compensation regularly fixed and allowed for services regularly rendered to the hospital trust, arising out of any transaction to which the trust fund is or is to be a party.

(b) Receive compensation as a consultant to the hospital trust while also acting as a trustee or administrator, or as an employee of either.

(c) Have any direct or indirect material pecuniary interest in any loan or investment of the trust fund.

(2) The director may, after reasonable notice and a hearing, require removal of a trustee or prohibit the trustee from employing or retaining or continuing to employ or retain any person in the administration of the trust fund or hospital trust upon finding that continuation of the trustee or such employment or retention involves a conflict of interest not in the best interests of the trust or adversely affecting interests of members.

[41-3718, added 1977, ch. 204, sec. 2, p. 565.]

41-3719. POLITICAL CONTRIBUTIONS PROHIBITED. No trustee shall make or knowingly permit the making, directly or indirectly, of any political contribution by or from any hospital trust fund.

[41-3719, added 1977, ch. 204, sec. 2, p. 565.]

41-3720. RECOVERY OF DEPLETED FUNDS. If after notice and hearing the director finds that any hospital trust fund has been depleted by reason of any wrongful or negligent act or omission of a trustee or any other person, he shall transmit a copy of his findings to the attorney general of this state, who may bring an action in the name of the people of this state, or intervene in any action brought by or on behalf of a member for the recovery of the amount of such depletion, for the benefit of the trust fund.

[41-3720, added 1977, ch. 204, sec. 2, p. 565.]

41-3721. TERMINATION OF REGISTRATION. (1) The director shall terminate the registration of a hospital trust upon written request of the trustee, or if he finds, after an examination, that the trust fund is insolvent.

(2) The director may terminate the registration of a hospital trust for violation of this act, or failure of the trustee to file the annual statement with the director and pay the tax within the time required under sections [41-3713](#) and [41-3714](#), Idaho Code, or if he finds, after an examination of the trust fund and the hospital trust:

(a) That the hospital trust no longer meets the qualifications required by section [41-3707](#), Idaho Code, and that the deficiency will not or cannot be remedied within a reasonable time;

(b) That as a matter of frequent practice, claims are not being fairly and promptly paid;

(c) That the cost of administering the hospital trust is excessive in relation to the character and volume of service being rendered in the administration; or

(d) That the trust fund has been subject to fraudulent or dishonest practices on the part of the trustee, administrator, consultant, or any member thereof.

(3) The director shall so terminate the registration by his written order given to the trustee last of record and to each member last of record. The order shall state the grounds upon which made and its effective date. The order shall be subject to judicial review in the same manner as applies to official orders of the director in general.

[41-3721, added 1977, ch. 204, sec. 2, p. 565.]

41-3722. LIQUIDATION OF TRUST FUND. (1) Upon termination of administration, the trust fund of a hospital trust shall be liquidated.

(2) Liquidation shall be conducted by its trustee under a plan of liquidation in writing filed with the director, found by the director to be fair and equitable to all persons having a pecuniary interest in the trust fund, and approved by him. Any balance remaining after payment or adequate provision for all claims and charges against the trust fund shall be disposed of in such manner as is provided for in the plan of liquidation. Unless under the plan of liquidation liability for all unpaid claims and obligations of the trust fund has been assumed by other financially responsible person or persons, the existence of surplus funds for such disposition shall not be determined prior to expiration of two (2) years after termination of the registration.

(3) The plan of liquidation of an insolvent trust fund, after such plan has been approved by the director, shall be binding upon all persons pecuniarily interested in the trust fund. Pending the effectuation of the plan of liquidation of an insolvent trust fund the director may impose such prohibitions or restrictions upon disbursement or use of trust fund moneys as he deems advisable for the protection of all interested persons.

(4) If the trust fund is then insolvent and a plan of liquidation thereof satisfactory to the director as being fair and equitable is not filed with him within sixty (60) days after the effective date of termination of the plan's registration, or if liquidation of a solvent trust fund is not being carried out in accordance with the plan of liquidation theretofore approved by him, the director shall liquidate the trust fund under the applicable provisions of [chapter 33, title 41](#), Idaho Code (rehabilitation and liquidation), and for the purpose the trust fund shall be deemed to be an insolvent domestic insurer.

[41-3722, added 1977, ch. 204, sec. 2, p. 566.]

41-3723. OTHER PROVISIONS APPLICABLE. [Chapter 2, title 41](#), Idaho Code (the director of the department of insurance), and [chapter 13, title 41](#), Idaho Code (trade practices and frauds), to the extent applicable and not in conflict with the express provisions of this act, shall also apply with respect to hospital trusts, and for the purpose such trusts shall be deemed to be "insurers."

[41-3723, added 1977, ch. 204, sec. 2, p. 567.]

41-3724. PENALTIES. (1) Any person who willfully violates or causes or induces violation of any provision of this act or any lawful rule or regulation of the director issued thereunder, shall be subject to penalty as provided in subsection (4) of this section.

(2) An [Any] person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact in any application, examination, or statement required under this act or by lawful rule or regulation of the director thereunder, shall be subject to penalty as provided in subsection (4) of this section.

(3) Any person who makes a false entry in any book, record, statement, or report required by this act or lawful rule or regulation of the director thereunder to be kept by him for any self-funded plan, with intent to injure or defraud the trust fund or any member thereof, or to deceive any one authorized or entitled to examine the affairs of the hospital trust, shall be subject to penalty as provided in subsection (4) of this section.

(4) For each such violation, act or omission referred to in this section, unless greater penalty is provided therefor under any other applicable law, the offender shall upon conviction thereof be subject to a fine of not more than one thousand dollars (\$1,000) and to imprisonment for not more than one (1) year, or to both such fine and imprisonment.

[41-3724, added 1977, ch. 204, sec. 2, p. 567.]

41-3725. RULES AND REGULATIONS. (1) The director may make reasonable rules and regulations necessary for or as an aid to effectuation of any provision of this act. No such rule or regulation shall extend, modify, or conflict with any provision of this act and the reasonable implications thereof.

(2) Such rules and regulations, or any amendment thereof, shall be made by the director only after a public hearing thereon of which the director has given written notice not less than thirty (30) days in advance to the trustee of each hospital trust then registered with him. If reasonably possible the director shall include with the notice a copy of the proposed rules and regulations or amendment, or a condensed summary of material proposed provisions.

(3) All procedures and policies concerning the promulgation of such rules and regulations, or any amendment thereof, are subject to the provisions of [chapter 52, title 67](#), Idaho Code, and the rules of practice and procedure of the department of insurance.

[41-3725, added 1977, ch. 204, sec. 2, p. 568.]

41-3726. APPLICATION OF CHAPTER. All of the provisions of this act shall apply to and confer all rights, privileges, exemptions and immunities upon any hospital trust established for the purposes contemplated by this

act, and the grantors, members, beneficiaries, participants and trustees thereof.

[41-3726, added 1977, ch. 204, sec. 2, p. 568.]

41-3727. INSURANCE. The coverage provided by a hospital trust established pursuant to this act shall be deemed insurance for the purposes of the requirements of [title 39](#), chapter 42, Idaho Code.

[41-3727, added 1977, ch. 204, sec. 2, p. 568.]

41-3728. CERTIFICATE OF MEMBERSHIP. Certification of membership in a hospital trust established pursuant to this act, in the form provided for in sections [39-4208](#) and [39-4209](#), Idaho Code, shall meet the certification requirements of the hospital-medical liability act.

[41-3728, added 1977, ch. 204, sec. 2, p. 568.]

41-3729. 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 remaining portions of this act.

[41-3729, added 1977, ch. 204, sec. 2, p. 568.]