

TITLE 41
INSURANCE

CHAPTER 40
SELF-FUNDED HEALTH CARE PLANS

41-4001. DECLARATION OF PURPOSE. (1) The purpose of this chapter is to recognize and provide reasonable supervision of self-funded or partially self-funded plans for provision of health care service benefits to employees or to students of a postsecondary educational institution in connection with or as an alternative to insurance and other prepayment plans, to provide standards for financial soundness of such plans, to protect the interests of employees or students covered thereby and to provide for the establishment of financially viable alternatives to traditional health care plans. The legislature of the state of Idaho declares that the existence and operation of such self-funded plans are matters of legislative concern, vitally affecting the rights and interests of the citizens of this state.

(2) The provisions of this chapter shall apply to any single employer or multiple employer plan or any postsecondary educational institution that provides a fully or partially self-funded health benefit plan for beneficiaries residing in this state to the extent that state regulation of such plan is not preempted by the employee retirement income security act of 1974, as amended.

[41-4001, added 1974, ch. 248, sec. 1, p. 1624; am. 2006, ch. 414, sec. 1, p. 1257; am. 2013, ch. 181, sec. 1, p. 419.]

41-4002. DEFINITIONS. For the purposes of this chapter unless context otherwise requires:

(1) "Administrator" is a person, if other than the trustee, employed or contracted by the trustee to provide administrative services to a self-funded plan.

(2) "Beneficiary" is any individual entitled, under the self-funded plan, to payment by the trust fund of any part or all of the cost of any health care service rendered to such beneficiary.

(3) "Claims liability" is the total of all incurred and unpaid claims, including incurred but not reported claims, for allowable benefits under a self-funded plan that are not reimbursed or reimbursable by stop-loss insurance provided by a carrier authorized to transact insurance in this state.

(4) "Contribution" is the amount paid or payable by the employer or employee, or a postsecondary educational institution or student, into the trust fund.

(5) "Department" is the Idaho department of insurance.

(6) "Director" is the director of the department of insurance.

(7) "Irrevocable trust agreement" is a trust agreement whereby under the terms thereof the plan sponsor cannot retain the power to alter, amend, revoke or terminate the transfer of funds or property held in trust.

(8) "Multiple employer welfare arrangement" or "multiple employer welfare plan" shall have the same meaning as that given to the term "multiple employer welfare arrangement" by the employee retirement income security act of 1974, as amended.

(9) "Person" is any individual, corporation, limited liability company, partnership, association, firm, syndicate, organization, educational

institution or any other public or private entity organized or recognized under the laws of the state of Idaho.

(10) "Plan sponsor" is any person who creates a self-funded health benefit plan for the benefit of any employer and employee or employees, or a postsecondary educational institution and student or students.

(11) "Postsecondary educational institution" is a person whose primary purpose is to provide a postsecondary education that offers or awards educational degrees and that provides courses or programs that lead to an educational degree, that is legally authorized and maintains a presence in the state of Idaho, and that has an average annualized enrollment of eight hundred (800) or more full-time students located in Idaho.

(12) "Public postsecondary educational institution" means Boise State University, Idaho State University, Lewis-Clark State College and the University of Idaho, along with the board of regents and board of trustees thereof.

(13) "Qualified actuary" is an actuary having experience in establishing rates for a self-funded plan and the health services being provided, and who is also a fellow of the society of actuaries, a member of the American academy of actuaries or an enrolled actuary under the employee retirement income security act of 1974, as amended.

(14) "Self-funded plan" or "plan" is any single employer plan, public postsecondary educational institution plan, or multiple employer welfare plan, or any other single or multiple employer plan, or any postsecondary educational institution student health benefit plan, other than a plan providing only benefits under [title 72](#), Idaho Code, under which payment for medical, surgical, hospital, and other services for prevention, diagnosis, or treatment of any disease, injury, or bodily condition of an employee is, or is to be, regularly provided for or promised from funds created or maintained in whole or in part by contributions or payments thereto by the employer or employers, or by the employer or employers and the employees, or by a postsecondary educational institution and students at said institution, or students of a postsecondary educational institution, who are not otherwise covered by insurance or contract with a health care service corporation or managed care organization authorized to transact business in this state.

(15) "Single employer" is any individual, sole proprietorship, business, partnership, corporation, limited liability company, firm or any other form of legally recognized entity or a group of two (2) or more employers under "common control" as defined in section 3(40)(B)(iii) of the employee retirement income security act of 1974, as amended.

(16) "Student" is an individual enrolled in a postsecondary educational institution.

(17) "Surplus" is the excess of the assets of a self-funded plan minus the liabilities of the plan, provided the liabilities of a self-funded plan shall include the claims liability of the plan.

(18) "Trust fund" is a trust fund established in conjunction with a self-funded plan for receipt of contributions of employer and employees, postsecondary educational institution and students, and payment of or with respect to health care service costs of beneficiaries.

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

[41-4002, added 1974, ch. 248, sec. 2, p. 1624; am. 2006, ch. 414, sec. 2, p. 1257; am. 2013, ch. 181, sec. 2, p. 420; am. 2015, ch. 49, sec. 1, p. 107.]

41-4003. REGISTRATION REQUIRED -- EXEMPTIONS -- NOT SUBJECT TO INSURANCE CODE. (1) No person shall offer or operate a self-funded plan in this state unless the plan is registered with the director as hereinafter provided.

(2) No registration shall be required of:

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

(b) Any plan established and maintained for the purpose of complying with any worker's compensation law or unemployment compensation disability insurance law.

(c) Any plan administered by or for the federal government, a federal agency, the state, or any county of this state.

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

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

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

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

(5) Any plan registered as a single employer plan or as a multiple employer welfare plan shall not operate as or be registered as a postsecondary educational institution student health benefit plan. Any plan registered as a postsecondary educational institution student health benefit plan shall

not operate as or be registered as a single employer plan or as a multiple employer welfare plan.

[41-4003, added 1974, ch. 248, sec. 3, p. 1624; am. 2001, ch. 308, sec. 1, p. 1114; am. 2004, ch. 86, sec. 1, p. 321; am. 2006, ch. 414, sec. 3, p. 1259; am. 2013, ch. 181, sec. 3, p. 421; am. 2019, ch. 306, sec. 1, p. 915.]

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

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

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

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

(d) The plan must provide that the trustee shall furnish to each employee-beneficiary or each student-beneficiary a copy of the plan, which shall include a written statement or schedule adequately and clearly stating all benefits currently provided under the plan, as well as all applicable restrictions, limitations, and exclusions, and the procedure for filing a claim for benefits.

(e) The plan shall require that the trust fund be actuarially sound. Assets and income of the trust fund shall at all times be reasonably adequate to provide for full payment of all benefits promised to beneficiaries by the plan and to cover all other costs of operation. The initial contribution rates shall be calculated by a qualified actuary and shall include a reasonable provision for adverse deviation and a reasonable contribution to surplus.

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

(2) After registration of the plan, in addition to the required quarterly and annual filings and other requirements as provided in this chapter, the trustee shall file the following documents with the director for his review and approval not less than thirty (30) days before the effective date thereof:

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

(b) Any changes in the policy form, benefits or summary plan description;

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

(d) Any amendments or changes made to administrative, service or management agreements;

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

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

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

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

[41-4004, added 1974, ch. 248, sec. 4, p. 1624; am. 1990, ch. 169, sec. 1, p. 366; am. 2006, ch. 414, sec. 4, p. 1259; am. 2013, ch. 181, sec. 4, p. 422; am. 2019, ch. 306, sec. 2, p. 916.]

41-4005. APPLICATION FOR REGISTRATION -- FEE. (1) Application for registration of a self-funded plan shall be made to the director, on forms prescribed by the director, seeking such information concerning whether, in the opinion of the director, the plan is qualified for registration. The application shall require the applicant to designate whether the plan is applying for registration as a single employer plan or multiple employer welfare plan or as a postsecondary educational institution student health benefit plan. The application shall be signed and verified by at least one (1) employer or, if applicable, by a person authorized by a postsecondary educational institution to sign the application and at least one (1) plan trustee. If the employer, postsecondary educational institution, or trustee is a corporation, the verification shall be by a duly authorized corporate officer or by a managing member of the plan sponsor if the plan sponsor is a limited liability company.

(2) The application shall be accompanied by all plan documents including:

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

(b) A copy of the proposed written statement of benefits referenced in section [41-4004](#)(1)(d), Idaho Code;

(c) A financial statement of the trust fund, if already in existence and operating at the time of application, certified by an independent certified public accountant. If the trust fund is not in existence at the time of application, a pro forma balance sheet for the start of operation of the plan and a pro forma balance sheet, by month, for the first twelve (12) months of operation of the plan shall accompany the application, provided that all balance sheets shall include actuarially determined claims liabilities;

(d) A written statement of reasonably projected income and disbursements of the trust fund, by month, for the twelve (12) month period commencing with the effective date of registration of the trust with the department and including changes to claims liabilities fully set forth in the monthly expenses as calculated by a qualified actuary;

(e) A copy of an actuarial study prepared by a qualified actuary certifying that the rates for the plan are sufficient to cover moderately adverse experience and all costs of operation. The study shall include

the development and justification of the assumptions used by the actuary in determining the rates. The rates shall not be less than the sum of projected incurred claims for the year, plus costs of operation, plus any prior year deficiency, less any excess surplus prior to the establishment of the contribution deficit reserve;

(f) With regard to a single employer plan or a multiple employer welfare plan, if the plan is domiciled outside this state, a letter or other written evidence of good standing from the plan's regulator in the state of domicile;

(g) A copy of every contract between the plan and any administrator, trustee or service company;

(h) A copy of a stop-loss insurance agreement issued by an insurer authorized to do business in this state providing both specific and aggregate coverage in an amount as annually indicated in the actuarial opinion for the plan, provided the director may waive the requirements for aggregate stop-loss coverage if such coverage is not reasonably available or otherwise deemed appropriate;

(i) A copy of the policy, contract, certificate, summary plan description or other evidence of the benefits and coverages provided to beneficiaries, including a table of the rates charged or proposed to be charged for each form of such contract accompanied by a certification of a qualified actuary that:

(i) The rates are neither inadequate nor excessive nor unfairly discriminatory;

(ii) The rates are appropriate for the classes of risks for which they have been computed; and

(iii) An adequate description of the rating methodology has been filed with the director and the methodology follows consistent and equitable actuarial principles; and

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

(3) The application shall be signed under oath by the plan sponsor or the trustee of the plan, and the application shall also include:

(a) A copy of any articles of incorporation and bylaws or any founding documents and bylaws of any entity acting as a plan sponsor;

(b) A list of the names, addresses and official capacities concerning the plan of the individuals who will be responsible for the management and conduct of the affairs of the plan, including all trustees, officers and directors. Biographical affidavits shall be submitted for all trustees and management personnel on a form prescribed by the director. Management personnel of the trust shall be experienced and competent to ensure the trust's compliance with Idaho laws and rules. Such individuals shall fully disclose the extent and nature of any contracts or arrangements between them and the plan, including any possible conflicts of interest; and

(c) A copy of the articles of incorporation, bylaws, if any, and irrevocable trust agreement of the plan, as well as any other document concerning the operation of the plan.

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

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

[41-4005, added 1974, ch. 248, sec. 5, p. 1624; am. 1979, ch. 122, sec. 8, p. 381; am. 1984, ch. 23, sec. 12, p. 44; am. 2006, ch. 414, sec. 5, p. 1260; am. 2013, ch. 181, sec. 5, p. 423.]

41-4006. GRANT OR DENIAL OF REGISTRATION. (1) The director shall act upon an application for registration of a self-funded plan with all reasonable promptness, but not more than ninety (90) days from the date of submission of a complete application to the director. Failure to act within the ninety (90) day time period shall be deemed as registration of such self-funded plan by the director.

(2) The director may make such investigation of the application for registration as he deems advisable. If the director finds that the application is complete and that the plan meets the qualifications stated in sections [41-4004](#) and [41-4005](#), Idaho Code, and is otherwise consistent with the provisions of this chapter, he shall issue and deliver a certificate of registration in appropriate form to the applicant.

(3) In the event the director denies an applicant's application for registration, the director shall notify the applicant in writing of the basis for the denial. Within twenty-one (21) days of the issuance of the notice of denial, the applicant may submit to the director a written request for a hearing before the director or his duly appointed representative addressing the basis for the denial of the application and requesting that the director reexamine the applicant's qualifications for registration. An applicant's failure to request a hearing in writing within twenty-one (21) days of the issuance of the notice of denial shall be deemed a waiver of the opportunity for hearing.

[41-4006, added 1974, ch. 248, sec. 6, p. 1624; am. 2006, ch. 414, sec. 6, p. 1262; am. 2013, ch. 181, sec. 6, p. 425.]

41-4007. TRUST FUND -- AUTHORITY. The trust fund of a self-funded plan shall have the authority:

- (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 shall be in writing and shall be signed by the trustee of the fund, 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 chapter, or reasonably incidental thereto.

[41-4007, added 1974, ch. 248, sec. 7, p. 1624; am. 2006, ch. 414, sec. 7, p. 1262; am. 2013, ch. 181, sec. 7, p. 425.]

41-4008. TRUST FUND LIABILITY -- FIDUCIARY FUNDS. (1) The trust fund of a self-funded plan shall be legally liable for payment of all applicable benefits stated in the schedule of benefits for such plan in effect at the time a claim thereunder arises.

(2) Funds in the trust fund are fiduciary funds, and are not liable to any obligation of any plan sponsor, including any employer participant or postsecondary educational institution, nor are fiduciary funds held in the trust subject to garnishment or levy. The prohibition on garnishment or levy shall not be deemed to prohibit levy upon the trust fund by any

provider thereof (or its assignee) for health care services rendered to a beneficiary.

(3) All funds and moneys received by the self-funded plan and all funds billed and paid as contributions to the trust fund shall be timely deposited in the trust account and shall be held in no other name than the name of the self-funded plan.

[41-4008, added 1974, ch. 248, sec. 8, p. 1624; am. 2013, ch. 181, sec. 8, p. 426.]

41-4009. INVESTMENT OF TRUST FUND. (1) The trustee may invest trust funds available for that purpose 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, including the payment of principal and interest thereon of which are 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, including payment of principal and interest of which are adequately secured by securities in which the trust fund could lawfully invest directly.

(e) Deposits, savings accounts, and share accounts in chartered banks and savings and loan associations located in the United States. An investment in any one (1) such institution may not be in excess of the amount covered by applicable deposit, savings, and share account insurance, unless otherwise authorized by the director.

(f) Investments as permitted by sections [41-714](#) and [41-716](#), Idaho Code, provided that the combined amount of such investments shall not exceed ten percent (10%) of the total assets of the trust fund.

(2) In addition to investments excluded under subsection (1) of this section, the trustee is expressly prohibited from investing trust fund moneys in:

(a) Any loan to or security of any plan sponsor including any employer or postsecondary educational institution participating in the plan, or to or of any trustee, officer, director, subsidiary or affiliate of any such plan sponsor, employer or postsecondary educational institution.

(b) The security of any person in which the trustee, administrator, or any consultant of the plan has a direct or indirect material pecuniary interest.

(c) Real property or loans thereon.

(d) Any personal loan.

(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 benefit of the trust fund.

(4) No investment shall be made by or on behalf of the trust fund unless authorized in writing by the trustee and included 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 penalties that may be applicable 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.

[41-4009, added 1974, ch. 248, sec. 9, p. 1624; am. 2006, ch. 414, sec. 8, p. 1263; am. 2013, ch. 181, sec. 9, p. 426.]

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

(a) A reserve in an amount as certified by a qualified actuary as being necessary for payment of claims liability. The reserve shall be reasonably adjusted on a quarterly basis in an amount as determined by a qualified actuary or other qualified person if authorized by the director.

(b) If, under the plan, periodic contributions to the trust fund have been paid in advance or are payable less frequently than monthly, there shall be a reserve 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) If future claims payments plus future costs of operation are greater than future contributions plus current reserves, there shall be a reserve in an amount equal to future claims payments plus future costs of operation, less future contributions, less current reserves.

(2) In any determination of the financial condition of the trust fund, the claims reserve, reserve for unearned contributions and contribution deficiency reserve shall constitute liabilities.

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

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

(ii) One hundred ten percent (110%) of the difference between the total dollar aggregate stop-loss attachment point plus costs of operation and the total dollar expected contributions for the current plan year.

(b) Paragraph (a) of this subsection notwithstanding, a public post-secondary educational institution shall instead be required to establish and maintain in its trust fund surplus an amount equal to at least thirty percent (30%) of the unpaid claims liability of the plan.

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

(i) The plan or trust carries insurance providing aggregate coverage and specific coverage;

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

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

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

2. Is funded, at minimum on a monthly basis, at an amount equal to at least one hundred percent (100%) of the

self-funded plan's liability, less any surplus as defined in section [41-4002](#), Idaho Code, from previous years.

The director may also waive any or all requirements provided in subparagraphs (i) through (iii) of this paragraph, provided that the plan maintains reserves and surplus, as defined in section [41-4002](#), Idaho Code, of at least the amount certified annually by a qualified actuary as sufficient without aggregate coverage.

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

(5) Up to one-third (1/3) of the surplus required by this section may be funded by a clean, irrevocable letter of credit, in a form acceptable to the director, issued in favor of the trust fund by a federally or state-chartered bank having a branch office in Idaho. Such irrevocable letter of credit cannot be guaranteed by pledge of any of the plan assets. The funding cannot be in the form of prepaid contributions or other loan or associated with an offsetting liability.

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

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

[41-4010, added 1974, ch. 248, sec. 10, p. 1624; am. 2006, ch. 414, sec. 9, p. 1264; am. 2013, ch. 181, sec. 10, p. 427; am. 2015, ch. 49, sec. 2, p. 109; am. 2017, ch. 179, sec. 1, p. 410; am. 2019, ch. 306, sec. 3, p. 917.]

41-4011. RECORDS AND ACCOUNTS -- ANNUAL STATEMENT. (1) The trustee of a self-funded plan shall cause full and accurate records and accounts to be entered and maintained during all times of the existence of the trust covering all financial transactions and affairs of the trust fund, which records and accounts shall be subject to review by the director. Any audit of the plan or trust shall be completed independently of any other entity.

(2) Within ninety (90) days after close of a fiscal year of the plan, the trustee shall prepare an annual statement in writing summarizing the financial transactions of the trust fund for such fiscal year and the financial condition of the trust at the end of such year in accordance with the requirements of this chapter and with generally accepted accounting principles. The statement shall be in a form acceptable to the director and include such information as prescribed by the director. The financial information included therein shall be certified by the accountant who audited such information. The trustee shall promptly deliver a copy of the statement to each employer or postsecondary educational institution participating in the plan and keep a copy thereof on file in the business office from which the plan is operated. Such statement shall be available for review by any beneficiary at all reasonable times for a period of not less than three (3) years from the date of the statement. If the plan is managed by a third party admin-

istrator, such statement shall be available at the administrative offices of the employer or employers or postsecondary educational institution.

(3) The plan's annual statement shall be accompanied by the certified actuarial opinion described in section [41-4010](#), Idaho Code. Such annual statement shall be prepared in accordance with actuarial standard of practice no. 28. The self-funded plan shall require that the qualified actuary retain the actuarial work papers until the department has filed an examination report of the plan covering the period of the actuarial opinion but no longer than seven (7) years from the date of such opinion.

(4) On or before expiration of such ninety (90) day period the trustee shall file an original of the annual statement and certified actuarial opinion with the director. The actuarial opinion shall be filed in a form prescribed by the director. The trustee shall pay a filing fee as provided for by rule. The director may grant a thirty (30) day extension of the time for filing the annual statement.

(5) The trustee shall also file quarterly supplemental unaudited financial reports and other periodic supplemental unaudited financial reports in a form and at the times prescribed by the director.

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

(7) The annual and quarterly reports required under this section are public records and are available to the public, notwithstanding the exemptions from disclosure provided in [chapter 1, title 74](#), Idaho Code.

[41-4011, added 1974, ch. 248, sec. 11, p. 1624; am. 1984, ch. 23, sec. 13, p. 45; am. 2006, ch. 414, sec. 10, p. 1264; am. 2010, ch. 96, sec. 2, p. 184; am. 2013, ch. 181, sec. 11, p. 428; am. 2015, ch. 141, sec. 113, p. 463.]

41-4012. TAXES. (1) Each self-funded plan required to be registered under this chapter is subject to the tax as provided in this section. Each registered self-funded plan, and each formerly registered plan with respect to beneficiaries in this state while so registered, shall simultaneously with the filing of its annual statement with the director, pay to the director a tax computed at the rate of four cents (4¢) per month per beneficiary covered by the plan during the fiscal year of the annual statement with respect to all beneficiaries working or resident in this state. Any plans operating in Idaho without proper registration shall be subject to back taxes for all years the plan was in operation plus all other sanctions authorized by law.

(2) All excise, privilege, franchise, income, license and similar taxes, licenses and fees are hereby preempted from imposition upon self-funded plans and on the intangible property of their trust funds; and no county, city, municipality, district, school district, or other political subdivision or agency of Idaho shall levy upon such plans or trust funds any such tax, license or fee additional to those set forth in this chapter.

(3) The tax imposed on self-funded plans in subsection (1) of this section, together with the fees imposed on such plans as set forth in this chapter, shall be in lieu of any and all income taxes and other excise taxes, licenses and fees payable to the state of Idaho. No self-funded plan shall be required to file any tax returns or comply with any provisions governing such income taxes and other excise taxes, licenses and fees payable to the state of Idaho.

(4) The director shall promptly remit all such tax payments received by him pursuant to this section to the state treasurer for credit to the state general fund.

[41-4012, added 1974, ch. 248, sec. 12, p. 1624; am. 1982, ch. 252, sec. 3, p. 645; am. 2006, ch. 414, sec. 11, p. 1265; am. 2013, ch. 181, sec. 12, p. 429.]

41-4013. EXAMINATION OF BOOKS, RECORDS AND ACCOUNTS. (1) The books, records, accounts and affairs of a self-funded plan shall be subject to examination by the director, by qualified examiners duly authorized by him in writing, at such times or intervals as the director deems appropriate. The purposes of the examination shall be to determine compliance of the plan with applicable laws, the plan's financial condition, the adequacy of the plan's trust fund, the treatment accorded by the plan to its beneficiaries and any other factors deemed materially relevant by the director to the plan's management and operation.

(2) The trustee shall promptly make the books, records and accounts of the plan and trust fund available to the department's examiner in Idaho and otherwise facilitate the examination.

(3) The examiner shall conduct the examination expeditiously, prepare the report of the examination in writing, and deliver a copy thereof to the trustee and the director as soon as practicable. The trustee shall have no longer than four (4) 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 appropriate, 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, including any modifications made to the examiner's original report as submitted to the director.

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

[41-4013, added 1974, ch. 248, sec. 13, p. 1624; am. 2001, ch. 85, sec. 12, p. 219; am. 2006, ch. 414, sec. 12, p. 1265; am. 2013, ch. 181, sec. 13, p. 429.]

41-4014. TRUSTEES -- ADMINISTRATORS -- BONDING. (1) Either an individual or a corporation or other legal entity may be a trustee of the trust fund. Any person acting as a trustee is a fiduciary acting on behalf of the beneficiaries of the plan and the trust fund in such capacity. An individual, firm, corporation or other legal entity may be an administrator of a plan.

(2) An employer participant in the plan shall be neither a trustee nor the administrator. A postsecondary educational institution as a plan sponsor of a self-funded plan shall be neither a trustee nor an administrator of such plan. However, this subsection shall not prohibit an individual who is otherwise an employee of such an employer or a postsecondary educational institution from being trustee or administrator.

(3) The trustee shall obtain a fidelity bond, or coverage deemed by the director to be equivalent to a fidelity bond, in the name of the self-funded plan, the purpose of which is to protect against acts of fraud and dishonesty by the plan's trustees, directors, officers and employees in connection with the trust fund or plan. Such bond shall be in an amount equal to the greater

of ten percent (10%) of the contributions received by the plan or ten percent (10%) of the benefits paid during the preceding calendar year. If the plan was not in operation during the preceding calendar year, the bond shall be in an amount equal to ten percent (10%) of the contributions projected to be received by the plan during its first year of operation. The amount of any bond required under this section shall be not less than twenty-five thousand dollars (\$25,000) or more than five hundred thousand dollars (\$500,000).

(4) Any administrator that is retained by a self-funded plan must be licensed and bonded as an administrator pursuant to [chapter 9, title 41](#), Idaho Code.

[41-4014, added 1974, ch. 248, sec. 14, p. 1624; am. 2006, ch. 414, sec. 13, p. 1266; am. 2013, ch. 181, sec. 14, p. 430.]

41-4015. PROHIBITED PECUNIARY INTERESTS IN PLAN MANAGEMENT. (1) No plan sponsor, trustee, administrator, or other person having responsibility for the management of a self-funded plan or the investment or other handling of trust funds shall:

(a) Receive directly or indirectly or have a pecuniary interest, either directly or indirectly, in any fee, commission, compensation, or emolument, other than salary or other similar compensation regularly fixed and authorized for services duly rendered to the plan, arising out of any transaction to which the trust fund is or may become a party.

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

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

(2) No consultant to the plan or trust fund shall directly or indirectly receive or have a pecuniary interest, either directly or indirectly, in any commission or other compensation arising out of any contract or transaction between the plan or trust fund and any insurer, health care service corporation, health maintenance organization or other provider of health care services or of drugs or other health care needs and supplies.

(3) The director may, after reasonable notice and the opportunity for 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 plan, upon finding that continuation of the trustee or such employment or retention involves a conflict of interest or an interest with the potential to adversely affect plan beneficiaries.

[41-4015, added 1974, ch. 248, sec. 15, p. 1624; am. 2006, ch. 414, sec. 14, p. 1266; am. 2013, ch. 181, sec. 15, p. 431.]

41-4016. POLITICAL CONTRIBUTIONS PROHIBITED. No trustee shall make or knowingly permit the making, directly or indirectly, of any political contribution by or from any self-funded plan trust fund.

[41-4016, added 1974, ch. 248, sec. 16, p. 1624.]

41-4017. RECOVERY OF DEPLETED FUNDS. If after notice and the opportunity for a hearing the director finds that any self-funded plan 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 an employer or beneficiary, for the recovery of the amount of such depletion, for the benefit of the trust fund, and to impose any sanctions as authorized by law.

[41-4017, added 1974, ch. 248, sec. 17, p. 1624; am. 2013, ch. 181, sec. 16, p. 431.]

41-4018. TERMINATION OF REGISTRATION. (1) The director shall terminate the registration of a self-funded plan upon written request of the trustee, or if he finds, after an inquiry or an examination, that the trust fund is insolvent. For the purposes of this chapter, "insolvent" means the plan is unable to pay its obligations when they are due or that its assets do not exceed its liabilities. As used in this chapter, "assets" means all investments held in the name of the trust as permitted by section [41-4009](#), Idaho Code.

(2) The director may terminate the registration of a plan for violation of this chapter, or failure of the trustee to timely file with the director the annual statement or actuarial opinion and timely pay the tax required under sections [41-4011](#) and [41-4012](#), Idaho Code, or if he finds, after an inquiry or an examination of the trust fund and the plan or notice from the trustee:

(a) That the plan no longer meets the qualifications required by sections [41-4004](#) and [41-4005](#), Idaho Code, and that such deficiency will not or cannot be remedied within a reasonable time;

(b) That there is a pattern of benefits promised by the plan that are not being fairly and promptly paid;

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

(d) That the trust fund has been subject to fraudulent, incompetent or dishonest practices on the part of the trustee, administrator, consultant, any participating employer, any postsecondary educational institution, beneficiaries or others; or

(e) That the trust fund does not meet the minimum surplus requirements under this chapter.

(3) The director shall terminate the plan's registration by his written order provided to the trustee last of record with the department and to each employer or postsecondary educational institution last of record with the department. Such order shall state the grounds upon which it is based 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.

[41-4018, added 1974, ch. 248, sec. 18, p. 1624; am. 2006, ch. 414, sec. 15, p. 1267; am. 2013, ch. 181, sec. 17, p. 431.]

41-4019. LIQUIDATION OF TRUST FUND. (1) Upon termination of registration of the plan, the trust fund of a self-funded plan shall be liquidated as soon as practicable.

(2) Liquidation of a solvent self-funded plan shall be conducted by its trustee under a plan of liquidation in writing filed with and approved by the director as fair and equitable to all persons having a pecuniary interest in the trust fund. 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 the plan of liquidation provides that liability for all unpaid claims and obligations of the trust fund has been unconditionally assumed by other financially responsible person or persons and the third party contract has been submitted to the department for its review, 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 liquidation of an insolvent self-funded plan shall be carried out by the director in accordance with [chapter 33, title 41](#), Idaho Code (rehabilitation and liquidation). For this purpose, the self-funded plan shall be deemed to be an insolvent domestic insurer and subject to all statutes and rules applicable to the same.

[41-4019, added 1974, ch. 248, sec. 19, p. 1624; am. 2006, ch. 414, sec. 16, p. 1268; am. 2013, ch. 181, sec. 18, p. 432.]

41-4020. RULES. (1) The director may promulgate reasonable rules necessary for or as an aid to effectuation of any provision of this chapter. No such rule shall extend, modify, or conflict with any provision of this chapter and the reasonable implications thereof.

(2) Such rules, or any amendment thereof, shall be made by the director in accordance with [chapter 52, title 67](#), Idaho Code.

[41-4020, added 1974, ch. 248, sec. 20, p. 1624; am. 2006, ch. 414, sec. 17, p. 1268; am. 2013, ch. 181, sec. 19, p. 432.]

41-4021. OTHER PROVISIONS APPLICABLE. [Chapter 2, title 41](#), Idaho Code, (the director of the department of insurance), [chapter 9, title 41](#), Idaho Code, (insurance administrators), [chapter 13, title 41](#), Idaho Code, (trade practices and frauds), [chapter 56, title 41](#), Idaho Code, (prompt payment of claims), [chapter 59, title 41](#), Idaho Code, (external review), section [41-1845](#), Idaho Code, (recreational-related activities), sections [41-2141](#) and [41-2216](#), Idaho Code, (coordination with social security benefits), and section [41-2841](#), Idaho Code, (borrowed surplus), to the extent applicable and not in conflict with the express provisions of this chapter, shall also apply with respect to self-funded plans, and for the purpose such plans shall be deemed to be "insurers."

[41-4021, added 1974, ch. 248, sec. 21, p. 1624; am. 1978, ch. 10, sec. 6, p. 22; am. 2006, ch. 414, sec. 18, p. 1269; am. 2013, ch. 181, sec. 20, p. 433.]

41-4022. PENALTIES. (1) Any person who violates or causes or induces violation of any provision of this chapter, or any lawful rule of the director issued thereunder, shall be subject to an administrative penalty for each violation of not more than one thousand dollars (\$1,000) for an individual and not more than five thousand dollars (\$5,000) for any entity for each violation.

(2) 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 relating to self-funded plans, trust accounts, administration of a plan or any matter materially related thereto, 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 chapter or any rule of the director promulgated thereunder, with intent to injure or defraud the trust fund or any beneficiary thereunder, or to deceive anyone authorized or entitled to examine the affairs of the plan, shall be subject to penalty as provided in subsection (4) of this section.

(4) For each such violation, act or omission referred to in subsections (2) and (3) of 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 fifteen thousand dollars (\$15,000) and to imprisonment for not more than fifteen (15) years, or to both such fine and imprisonment.

(5) Further, the director may in his discretion:

- (a) Order the person to cease and desist from the violation of such provision;
- (b) Issue an order revoking or suspending the registration of the plan that engaged in such violation;
- (c) Bring an action in the fourth district court in and for Ada county or in such other court as the director deems appropriate to seek appropriate injunctive relief and impose a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

[41-4022, added 1974, ch. 248, sec. 22, p. 1624; am. 2006, ch. 414, sec. 19, p. 1269; am. 2013, ch. 181, sec. 21, p. 433.]

41-4023. COVERAGE FROM MOMENT OF BIRTH -- COMPLICATIONS OF PREGNANCY. (1) Every self-funded plan issued pursuant to this chapter in this state, or providing coverage to any covered family residing within this state, shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn child or infant of any covered family, including a newborn child placed with the adoptive covered family within sixty (60) days of the adopted child's date of birth. Coverage under the self-funded plan for an adopted newborn child placed with the adoptive covered family more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accordance with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "child" means an individual who has not reached eighteen (18) years of age as of the date of the adoption or placement for adoption. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive covered family, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive covered family signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection as to a child placed for adoption with a covered family continues in the same manner as it would with respect to a naturally born child of the covered family until the first to occur of the following events:

- (a) The date the child is removed permanently from that placement and the legal obligation terminates; or
- (b) The date the covered family rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

No such plan may be issued or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn or adopted children or infants of a covered family, which child or children are covered from and after the moment of birth that is inconsistent with the provisions of this section.

(2) Neither the plan trustee or employer or a postsecondary educational institution nor an insurer shall restrict coverage under a self-funded plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a pre-existing condition of the child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) No self-funded plan which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the plan. If a fixed amount is specified in such plan for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the plan. Where the plan contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the plan. This subsection shall apply to all self-funded plans except any such plan made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this subsection, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All plans subject to this subsection and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such plan which is in conflict with this section shall be of no force or effect.

(4) From and after January 1, 1998, no self-funded plan that provides maternity benefits shall restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child in a manner that would be in conflict with the newborns' and mothers' health protection act of 1996.

(5) Any new or renewing self-funded group disability plan or blanket disability plan delivered or issued for delivery in this state shall provide that an unmarried child under the age of twenty-six (26) years shall be permitted to remain on the parent's or parents' plan. Further, any unmarried child of any age who is medically certified as disabled and financially dependent upon the parent is permitted to remain on the parent's or parents' plan.

[41-4023, added 1976, ch. 113, sec. 5, p. 448; am. 1993, ch. 305, sec. 5, p. 1134; am. 1994, ch. 365, sec. 10, p. 1165; am. 2006, ch. 414, sec.

20, p. 1269; am. 2008, ch. 296, sec. 4, p. 828; am. 2009, ch. 125, sec. 6, p. 396; am. 2013, ch. 181, sec. 22, p. 433.]

41-4024. SERVICES PROVIDED BY GOVERNMENTAL ENTITIES. (1) From and after July 1, 1990, no self-funded plan shall be issued in Idaho which excludes from coverage services rendered the subscriber while a resident in an Idaho state institution, provided the services to the subscriber would be covered by the contract if rendered to him outside an Idaho state institution.

(2) From and after July 1, 1990, no self-funded plan may contain any provision denying or reducing benefits otherwise provided under the policy for the reason that the person insured is receiving health or mental health care or developmental services provided by the department of health and welfare, whether or not the department of health and welfare bases its charges for such services on the recipient's ability to pay. Provided, nothing in this section shall prevent the issuance of a contract which excludes or reduces benefits where the charge level or amount of the charge levied by a governmental entity for such services would vary or be affected in any way by the existence of coverage under a self-funded plan.

[41-4024, added 1990, ch. 300, sec. 5, p. 830.]

41-4025. MAMMOGRAPHY COVERAGE. (1) From and after July 1, 1992, all self-funded plans which provide coverage for the surgical procedure known as a mastectomy which are delivered, issued for delivery, continued or renewed in this state shall provide minimum mammography examination or equivalent examination coverage. Such coverage shall include at least the following benefits:

(a) One (1) baseline mammogram for any woman who is thirty-five (35) through thirty-nine (39) years of age.

(b) A mammogram every two (2) years for any woman who is forty (40) through forty-nine (49) years of age, or more frequently if recommended by the woman's physician.

(c) A mammogram every year for any woman who is fifty (50) years of age or older.

(d) A mammogram for any woman desiring a mammogram for medical cause.

Such coverage shall not exceed the cost of the examination.

(2) As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons as determined by a licensed physician.

(3) Nothing in this section shall apply to specified accident, specified disease, hospital indemnity, medicare supplement, long-term care or other limited benefit health insurance policies.

[41-4025, added 1992, ch. 132, sec. 5, p. 415; am. 1993, ch. 113, sec. 5, p. 290.]