

TITLE 41
INSURANCE

CHAPTER 55
IDAHO INDIVIDUAL HIGH RISK REINSURANCE POOL

41-5501. DEFINITIONS. As used in this chapter:

- (1) "Agent" means a producer as defined in section [41-1003](#)(8), Idaho Code.
- (2) "Board" means the board of directors of the Idaho individual high risk reinsurance pool established in this chapter and the Idaho small employer health reinsurance program established in section [41-4711](#), Idaho Code.
- (3) "Carrier" means any entity that provides, or is authorized to provide, health insurance in this state. For purposes of this chapter, carrier includes an insurance company, any other entity providing reinsurance including excess or stop loss coverage, a hospital or professional service corporation, a fraternal benefit society, a managed care organization, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.
- (4) "Dependent" means a spouse, a child or any other individual listed as having coverage under the primary policy holder's or subscriber's health benefit plan.
- (5) "Director" means the director of the department of insurance of the state of Idaho.
- (6) "Eligible individual" means an Idaho resident individual or dependent of an Idaho resident who is:
 - (a) Not eligible for coverage under a group health benefit plan, part A or part B of title XVIII of the social security act (medicare), or a state plan under title XIX (medicaid) or any successor program, and who does not have other health insurance coverage; and
 - (b) Enrolled in an individual health benefit plan.
- (7) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance, or nonrenewable short-term coverage issued for a period of twelve (12) months or less.
- (8) "High risk medical condition" means a medical condition or diagnosis identified by the board in its plan of operation as making an individual eligible for reinsurance through the pool.
- (9) "High risk pool plan" means an individual basic, standard, catastrophic A, catastrophic B, or HSA compatible health benefit plan issued pursuant to this chapter prior to April 1, 2017.
- (10) "High risk pool plan premium" means all moneys paid by an individual or a dependent as a condition of receiving coverage from a carrier, in-

cluding any fees or other contributions associated with the health benefit plan.

(11) "Individual carrier" means a carrier that offers individual health benefit plans.

(12) "Plan of operation" means the plan of operation of the individual high risk reinsurance pool established pursuant to this chapter.

(13) "Pool" means the Idaho [individual] high risk reinsurance pool.

(14) "Reinsurance premium" means the premium set by the board pursuant to section [41-5506](#), Idaho Code, to be paid by a reinsuring carrier for eligible individuals ceded to the pool.

(15) "Reinsuring carrier" means a carrier participating in the individual high risk reinsurance pool established by this chapter.

[41-5501, added 2000, ch. 472, sec. 17, p. 1633; am. 2001, ch. 296, sec. 11, p. 1071; am. 2003, ch. 267, sec. 3, p. 715; am. 2004, ch. 285, sec. 3, p. 806; am. 2004, ch. 332, sec. 2, p. 990; am. 2005, ch. 25, sec. 96, p. 121; am. 2005, ch. 353, sec. 4, p. 1117; am. 2007, ch. 148, sec. 6, p. 439; am. 2008, ch. 297, sec. 1, p. 831; am. 2009, ch. 125, sec. 10, p. 403; am. 2017, ch. 281, sec. 1, p. 733.]

41-5502. CREATION OF THE INDIVIDUAL HIGH RISK REINSURANCE POOL -- BOARD. (1) There is hereby created an independent public body corporate and politic to be known as the Idaho individual high risk reinsurance pool. The pool will perform an essential governmental function in the exercise of powers conferred upon it in this chapter. The pool and any assessments imposed or collected pursuant to the operation of the pool shall at all times be free from taxation of every kind.

(2) The pool created by this chapter and the small employer reinsurance program established in section [41-4711](#), Idaho Code, shall operate subject to the supervision and control of the board. The board shall consist of ten (10) members. Eight (8) members shall be appointed by the director and serve at the pleasure of the director. The director or his designated representative shall serve as an ex officio member of the board. In selecting the members of the board the director shall appoint four (4) members representing carriers, two (2) disability agents and two (2) members representing consumer interests. One (1) member shall be a member of the senate appointed by the president pro tempore of the senate and one (1) member shall be a member of the house of representatives appointed by the speaker of the house.

(3) The initial nonlegislative board members shall be appointed as follows: two (2) of the members to serve a term of two (2) years; three (3) of the members to serve a term of four (4) years; and three (3) of the members to serve a term of six (6) years. Subsequent nonlegislative board members shall serve for a term of three (3) years. Legislative members of the board shall serve for a term of two (2) years. A vacancy in a legislative member's position on the board shall be filled in the same manner as the original appointment. All other vacancies on the board shall be filled by the director. A nonlegislative board member may be removed by the director for cause.

[41-5502, added 2000, ch. 472, sec. 17, p. 1635.]

41-5503. PLAN OF OPERATION. (1) The board shall submit to the director a plan of operation and thereafter any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the pool. The director may, after notice and hearing, approve the plan of opera-

tion if the director determines it to be suitable to assure the fair, reasonable and equitable administration of the pool, and to provide for the sharing of pool gains or losses on an equitable and proportionate basis in accordance with the provisions of this chapter. The plan of operation shall become effective upon written approval by the director.

(2) If the board fails to submit a suitable plan of operation, the director shall, after notice and hearing, adopt and promulgate a temporary plan of operation. The director shall approve the plan of operation submitted by the board, or adopt a temporary plan of operation if the board fails to submit a suitable plan. The director shall amend or rescind any plan adopted under the provisions of this section at the time a plan of operation is submitted by the board and approved by the director.

(3) The plan of operation shall:

- (a) Establish procedures for handling and accounting of pool assets and moneys and for an annual fiscal reporting to the director;
- (b) Establish procedures for selecting an administrator, and setting forth the powers and duties of the administrator;
- (c) Establish procedures for reinsuring risks in accordance with the provisions of this chapter;
- (d) Establish procedures and conditions for a carrier to cede individuals with certain high risk medical conditions;
- (e) Define the high risk medical conditions for which carriers are allowed to cede for reinsurance;
- (f) Set forth the reinsurance parameters including, but not limited to, the initial level of claims for which the reinsuring carrier is responsible, the coinsurance percentage at which claims above the initial level are reinsured by the pool, and the maximum claims limit above which the pool no longer reimburses;
- (g) Establish procedures for collecting assessments from carriers to fund claims and administrative expenses incurred or estimated to be incurred by the pool; and
- (h) Provide for any additional matters necessary for the implementation and administration of the pool.

[41-5503, added 2000, ch. 472, sec. 17, p. 1636; am. 2017, ch. 281, sec. 2, p. 735.]

41-5504. POWERS AND AUTHORITY. (1) The pool shall have the general powers and authority granted under the laws of this state to insurance companies and managed care organizations licensed to transact business, except the power to issue health benefit plans directly to individuals. In addition thereto, the pool shall have the specific authority to:

- (a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the director, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;
- (b) Sue or be sued, including taking any legal actions necessary or proper to recover any assessments and penalties for, on behalf of, or against the pool or any carrier;
- (c) Define the high risk medical conditions for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this chapter;

(d) Establish rules, conditions and procedures for reinsuring risks under the pool;

(e) Establish actuarial functions as appropriate for the operation of the pool;

(f) Assess carriers in accordance with the provisions of section [41-5508](#), Idaho Code, and make advance interim assessments of carriers as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year;

(g) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the pool, policy and other contract design, and any other function within the authority of the pool;

(h) Borrow money to effect the purposes of the pool. Any notes or other evidence of indebtedness of the pool not in default shall be legal investments for carriers and may be carried as admitted assets;

(i) Establish rules, policies and procedures as may be necessary or convenient for the implementation of this chapter and the operation of the pool.

(2) Neither the board nor its employees shall be liable for any obligations of the pool. No member or employee of the board shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under this chapter, unless such act or omission constitutes willful or wanton misconduct. The board may provide for indemnification of, and legal representation for, its members and employees.

(3) No participation of a reinsuring carrier in the pool, no establishment of rates, forms or procedures, and no other joint or collective action required under the provisions of this chapter shall be grounds for any legal action, criminal or civil liability, or penalty against the pool or any of its reinsuring carriers either jointly or separately.

(4) The pool shall have no authority to provide reinsurance for any claims incurred after December 31, 2022, unless the following conditions are met:

(a) The state develops an application for a waiver for state innovation pursuant to 42 U.S.C. 18052 of the federal patient protection and affordable care act that facilitates the resumption of operations of the pool in a manner that minimizes the loss of federal funding to support the affordability of health insurance in the state;

(b) After proper public comment periods and consultation with interested parties, including the pool board, and the approval of the governor, the waiver application is submitted to the secretary of the United States department of health and human services and to the secretary of the United States department of the treasury; and

(c) The waiver application is approved.

(5) The director shall have the authority as necessary or proper to develop, apply for, and upon approval implement an innovation waiver under 42 U.S.C. 18052 of the federal patient protection and affordable care act, including authorizing the pool to perform activities necessary for its implementation.

41-5505. REINSURANCE. (1) Any individual carrier issuing a health benefit plan shall be liable to the pool for the reinsurance premium and shall be reinsured by the pool for each eligible individual ceded in accordance with section [41-5509](#), Idaho Code, and the plan of operation.

(2) The pool shall reimburse a reinsuring carrier with respect to the claims of a ceded eligible individual incurred during the calendar year and paid by the reinsuring carrier for benefits covered by the health benefit plan, in accordance with the reinsurance parameters set forth in the plan of operation.

(a) The board may annually adjust the reinsurance parameters by submitting an amendment to the plan of operation in accordance with section [41-5503](#)(1), Idaho Code. The adjustments may reflect increases in costs and utilization within the individual market for health benefit plans but must consider the availability of pool funding and the stability of the individual health insurance market, as well as any objectives stated in the plan of operation.

(b) The board shall not submit for approval by the director a plan of operation or an amendment thereto with an initial level of less than twenty-five thousand dollars (\$25,000) or a reinsuring carrier coinsurance percentage of less than twenty percent (20%).

(3) A reinsuring carrier shall apply all managed care and claims handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(4) Each carrier shall make a filing with the director containing the carrier's earned health insurance premium derived from health benefit plans delivered or issued for delivery in this state in the previous calendar year.

(5) Each carrier shall file with the director, in a form and manner to be prescribed by the director, an annual report. The report shall state the number of resident persons insured under the carrier's health benefit plan, or through excess or stop loss coverage.

(6) Carriers shall permit individuals and their dependents covered by a high risk pool plan to remain on the high risk pool plan as long as the individual continues to meet the conditions of section [41-5501](#)(6) (a), Idaho Code.

[41-5505, added 2000, ch. 472, sec. 17, p. 1637; am. 2003, ch. 267, sec. 4, p. 717; am. 2005, ch. 353, sec. 5, p. 1119; am. 2017, ch. 281, sec. 4, p. 737.]

41-5506. REINSURANCE PREMIUM RATES. (1) The board, as part of the plan of operation, shall establish a methodology for determining reinsurance premium rates to be charged reinsuring carriers to reinsure individuals under this chapter. The methodology shall include a system for classification of individuals that reflects the types of case characteristics commonly used by individual carriers in the state. The methodology shall provide for the development of base reinsurance premium rates, subject to the approval of the director, which shall be set at levels which reasonably approximate gross premiums charged to individuals by individual carriers for health benefit plans. Rate adjustments under the provisions of this subsection shall not be subject to the provisions of section [41-5206](#), Idaho Code.

(2) The board periodically shall review the methodology established under the provisions of subsection (1) of this section, including the system

of classification and any rating factors, to assure that it reasonably reflects the claims experience of the pool. The board may propose changes to the methodology which shall be subject to the approval of the director.

(3) The board may consider adjustments to the reinsurance premium rates charged by the pool to reflect the use of effective cost containment and managed care arrangements.

[41-5506, added 2000, ch. 472, sec. 17, p. 1638; am. 2017, ch. 281, sec. 5, p. 738.]

41-5507. PREMIUM RATES FOR HIGH RISK POOL PLAN COVERAGE. (1) For high risk pool plans issued prior to April 1, 2017, the board shall establish premium rates for coverage under the individual basic, standard, catastrophic A, catastrophic B, and HSA compatible high risk pool plans.

(2) Separate schedules of premium rates based on age, individual tobacco use, geography as defined by rule of the director, gender and benefit plan design shall apply for individual risks.

(3) The board, with the assistance of the director and in accordance with appropriate actuarial principles, shall determine a standard risk rate by using the average rates that individual standard risks in this state are charged by at least five (5) of the largest health insurance carriers providing individual health insurance coverage to residents of Idaho that is substantially similar to the coverage offered by each high risk pool plan. In determining the average rate or charges of those health insurance carriers, the rates charged by those carriers shall be actuarially adjusted to determine the rate that would have been charged for benefits similar to those provided by each plan. The standard risk rates shall be established using reasonable actuarial techniques and shall reflect anticipated claims experience, expenses, and other appropriate risk factors for such coverage.

(4) Rates for plan coverage shall not be less than one hundred twenty-five percent (125%) nor more than one hundred fifty percent (150%) of rates established as applicable for individual standard risks pursuant to subsection (3) of this section.

(5) Carriers shall not issue high risk pool plans as defined in section [41-5501](#) (9), Idaho Code, after April 1, 2017.

[41-5507, added 2000, ch. 472, sec. 17, p. 1638; am. 2005, ch. 353, sec. 6, p. 1119; am. 2017, ch. 281, sec. 6, p. 738.]

41-5508. ASSESSMENTS. (1) Prior to March 1 of each year, the board shall determine and report to the director the pool's net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses, and any premium tax funds appropriated to the pool pursuant to section [41-406](#), Idaho Code.

(2) Any net loss for the year may be recouped by assessments of carriers.

(3) (a) For the assessment of March 1, 2001, and prior to March 1 of each succeeding year, the board shall determine and file with the director an estimate of the assessments needed to fund the losses incurred by the pool in the previous calendar year.

(b) The individual assessments shall be determined by multiplying net losses, if net earnings are negative, as defined by subsection (1) of this section, by a fraction, the numerator of which shall be the

carrier's total premiums earned in the preceding calendar year from all health benefit plans and policies or certificates of insurance for specific disease, and hospital confinement indemnity in this state as reported in the carrier's reports filed pursuant to section [41-5505](#) (4) and (5), Idaho Code, including reinsurance by way of excess or stop loss coverage, and the denominator of which shall be the total premiums earned in the preceding calendar year from all health benefit plans and policies or certificates of insurance for specific disease and hospital confinement indemnity in this state, including reinsurance by way of excess or stop loss coverage.

(4) If assessments exceed net losses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this paragraph, "future losses" includes reserves for incurred but not reported claims.

(5) Each carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the carriers with the director.

(6) The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

(7) A carrier may seek from the director a deferment from all or part of an assessment imposed by the board. The director may defer all or part of the assessment if the director determines that the payment of the assessment would place the carrier in a financially impaired condition. If all or part of an assessment against a carrier is deferred the amount deferred shall be assessed against the other carriers in a manner consistent with the basis for assessment set forth in this section. The carrier receiving the deferment shall remain liable to the pool for the amount deferred and shall be prohibited from reinsuring any individuals with the pool until such time as it pays the assessments.

[41-5508, added 2000, ch. 472, sec. 17, p. 1639; am. 2017, ch. 281, sec. 7, p. 739.]

41-5509. CEDING ELIGIBILITY. (1) The pool shall provide reinsurance to any eligible individual who qualifies for reinsurance pursuant to this chapter if evidence is provided that such person has a qualifying high risk medical condition as defined by section [41-5501](#) (8), Idaho Code.

(2) Notwithstanding any other provision of this chapter, eligibility for continuation of coverage under COBRA shall not render a person ineligible for reinsurance coverage under this chapter.

(3) Reinsurance through the pool shall cease:

- (a) On the first day of the month following the date a person is no longer a resident of this state;
- (b) On the date coverage under the individual health benefit plan ends;
- (c) Upon the death of the covered person;
- (d) At the option of the board, thirty (30) days after the plan makes any inquiry concerning the person's eligibility or place of residence to which the person does not reply.

(4) Reinsurance for a person who ceases to meet the eligibility requirements of this chapter may be terminated on the first day of the month following the date when the individual becomes ineligible.

[(41-5509) 41-5510, added 2000, ch. 472, sec. 17, p. 1640; am. 2004, ch. 285, sec. 4, p. 808; am. 2004, ch. 332, sec. 3, p. 992; am. 2005, ch.

71, sec. 1, p. 247; am. 2005, ch. 353, sec. 8, p. 1120; am. 2008, ch. 297, sec. 2, p. 832; am. and redesisg. 2017, ch. 281, sec. 9, p. 740.]