

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 149, As Amended in the Senate

BY BUSINESS COMMITTEE

AN ACT

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

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

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

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 ~~or~~, a federal agency thereof, 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

1 that operates in this state without registering under this chapter shall be
2 deemed to be engaged in the business of insurance without authorization and
3 any person offering or operating an unregistered plan shall be deemed to be
4 transacting insurance without proper licensing and subject to all sanctions
5 as provided by law.

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

16 (5) Any plan registered as a single employer plan or as a multiple em-
17 ployer welfare plan shall not operate as or be registered as a postsecondary
18 educational institution student health benefit plan. Any plan registered as
19 a postsecondary educational institution student health benefit plan shall
20 not operate as or be registered as a single employer plan or as a multiple em-
21 ployer welfare plan.

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

24 41-4004. PLAN REQUIREMENTS. (1) The director shall not register any
25 self-funded plan under this chapter unless the following requirements are
26 met:

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

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

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

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

47 (e) The plan shall require that the trust fund be actuarially sound.
48 Assets and income of the trust fund shall at all times be reasonably ade-
49 quate to provide for full payment of all benefits promised to beneficia-

1 ries by the plan and to cover all other costs of operation. The initial
2 contribution rates shall be calculated by a qualified actuary and shall
3 include a reasonable provision for adverse deviation and a reasonable
4 contribution to surplus.

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

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

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

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

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

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

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

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

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

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

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

36 41-4010. RESERVES AND SURPLUS. (1) The trustee of a self-funded plan
37 shall establish and maintain in the trust fund the following reserves:

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

42 (b) If, under the plan, periodic contributions to the trust fund have
43 been paid in advance or are payable less frequently than monthly, there
44 shall be a reserve for unearned contributions as computed pro rata on
45 the basis of the unexpired portion of the period for which the contribu-
46 tion has been paid.

47 (c) If future claims payments plus future costs of operation are
48 greater than future contributions plus current reserves, there shall be

1 a reserve in an amount equal to future claims payments plus future costs
2 of operation, less future contributions, less current reserves.

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (5) Up to one-third (1/3) of the surplus required by this section may be
46 funded by a clean, irrevocable letter of credit, in a form acceptable to the
47 director, issued in favor of the trust fund by a federally or state-chartered
48 bank having a branch office in Idaho. Such irrevocable letter of credit can-
49 not be guaranteed by pledge of any of the plan assets. The funding cannot be

1 in the form of prepaid contributions or other loan or associated with an off-
2 setting liability.

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

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