

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 179

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE HEALTH INSURANCE EXCHANGE; AMENDING SECTIONS 1 AND 2, AS  
2 ADDED BY SENATE BILL NO. 1042, AS ENACTED BY THE FIRST REGULAR SESSION OF  
3 THE SIXTY-SECOND IDAHO LEGISLATURE, TO ESTABLISH THE EXCHANGE AND THE  
4 BOARD, TO PROVIDE FOR POWERS AND AUTHORITY OF THE EXCHANGE, TO PROVIDE  
5 FOR REPORTING; AND DECLARING AN EMERGENCY.  
6

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

8 SECTION 1. That Sections 41-6104, 41-6105 and 41-6106, Idaho Code, as  
9 added in Section 1 of Senate Bill No. 1042, as enacted by the First Regu-  
10 lar Session of the Sixty-second Idaho Legislature, be, and the same is hereby  
11 amended to read as follows:

12 41-6104. ESTABLISHMENT OF THE EXCHANGE AND THE BOARD. (1) There is  
13 hereby created an independent body corporate and politic to be known as the  
14 "Idaho Health Insurance Exchange." Said exchange may exercise the authority  
15 and powers conferred by this chapter and such exercise shall be deemed and  
16 held to be the performance of an essential public function.

17 (2) The exchange created by this chapter is not a state agency, shall  
18 not be subject to the purchasing statutes and rules of the state of Idaho or  
19 subdivisions of the state including, but not limited to, chapters 28 and 57,  
20 title 67, Idaho Code, and shall operate subject to the supervision and con-  
21 trol of its board.

22 (3) The board shall consist of ~~sixteen~~ eighteen (16~~8~~) total members,  
23 with fourteen (14) voting members. Subject to the provisions of this sec-  
24 tion, members of the board shall collectively offer expertise, knowledge and  
25 experience in health benefits administration, health care finance, health  
26 plan purchasing, health care delivery system administration, public health  
27 and health policy issues related to small employer and individual markets  
28 and the uninsured. A majority of the board shall not collectively represent  
29 health carriers and producers. The fourteen (14) voting members shall be ap-  
30 pointed to the board by, and serve at the pleasure of, the governor. The mem-  
31 bers appointed to the board by the governor shall be subject to confirmation  
32 by the senate, provided that, upon appointment board members shall have full  
33 authority to exercise all the rights and duties, and participate in all deci-  
34 sions, required of the position. In selecting the fourteen (14) voting mem-  
35 bers of the board, the governor shall appoint:

36 (a) Three (3) members representing different health carriers;

37 (b) Two (2) members representing producers;

38 (c) Three (3) members representing individual consumer interests;

39 (d) Four (4) members representing small employer business interests  
40 with, at the time of appointment:

41 (i) One (1) member representing small employer business inter-  
42 ests employing between one (1) and ten (10) employees;

1 (ii) One (1) member representing small employer business inter-  
 2 ests employing between eleven (11) and twenty-five (25) employ-  
 3 ees;

4 (iii) One (1) member representing small employer business inter-  
 5 ests employing twenty-six (26) or more employees; and

6 (iv) One (1) at-large member; and

7 (e) Two (2) members representing health care providers.

8 The director or his designee, ~~and~~ the director of the state department of  
 9 health and welfare or his designee, a member of the house of representatives  
 10 appointed by the speaker of the house and a member of the senate appointed by  
 11 the president pro tempore shall each serve as ex officio nonvoting members  
 12 of the board. In the event of a deadlock upon a matter to be decided by the  
 13 board, the director of the state department of health and welfare or his de-  
 14 signee shall be entitled to vote.

15 (4) The fourteen (14) board members appointed by the governor shall  
 16 each serve a term of four (4) years or until a successor is appointed. A board  
 17 member may be appointed by the governor to serve subsequent terms. A vacancy  
 18 in a member's position on the board shall be filled in the same manner as the  
 19 original appointment.

20 (5) Whenever a member of the board has a conflict of interest on a matter  
 21 that is before the board, the member shall fully disclose it to the board,  
 22 abstain from any vote on the matter and shall also comply with any additional  
 23 requirements established pursuant to the plan of operation under section  
 24 41-6105, Idaho Code.

25 (6) Neither members of the board nor any other person working or per-  
 26 forming services for the exchange shall be:

27 (a) Considered employees of the state of Idaho by virtue of their ser-  
 28 vice on the board or performance of services for the exchange; or

29 (b) Eligible for or entitled to benefits from the public employee re-  
 30 tirement system of Idaho.

31 (7) Nothing in this chapter shall prevent a member of the board who is  
 32 otherwise a current or former state employee from receiving his usual state  
 33 compensation and benefits while serving on the board.

34 (8) All meetings of the board shall be held in accordance with the open  
 35 meeting law as provided for in chapter 23, title 67, Idaho Code, shall be held  
 36 in an open public forum, and every effort shall be made to make such meetings  
 37 televised or streamed in video and audio format.

38 (9) The board shall contract for an annual audit of the exchange by an  
 39 independent third party and shall accept requests for proposal (RFP) to bid  
 40 on such contract.

41 (10) The board shall develop, adopt and implement procurement policies  
 42 and guidelines.

43 41-6105. POWERS AND AUTHORITY OF THE EXCHANGE. (1) Unless otherwise  
 44 required by this chapter, in the discretion of the board, the exchange shall  
 45 have the powers and authority to:

46 (a) Perform all duties that are necessary and appropriate to implement  
 47 a health insurance exchange and the provisions of this chapter;

1 (b) Adopt bylaws for the regulation of its affairs and the conduct of  
2 its business, subject to the review and approval by the director. The  
3 director's consent shall be required for any amendment to the bylaws;

4 (c) Assess and collect fees from participating health carriers, ex-  
5 change users or participants and receive funds from any other source,  
6 that shall be used solely for the purposes of this chapter. The exchange  
7 shall not be subject to income tax imposed by the state of Idaho under  
8 chapter 30, title 63, Idaho Code;

9 (d) Appoint any advisory committees as deemed necessary by the board;

10 (e) Take any legal action to recover any amounts lawfully owed to the  
11 exchange or otherwise consistent with this chapter;

12 (f) Enter into contracts to effectuate and implement a health insurance  
13 exchange and shall accept requests for proposal (RFP) to bid on such  
14 contracts; and

15 (g) Develop, adopt and implement a plan of operation and other govern-  
16 ing documents to fulfill the requirements of this chapter.

17 (2) The exchange powers and authority shall be subject to the following  
18 limitations:

19 (a) The exchange shall not have the power to alter its own legal struc-  
20 ture;

21 (b) The exchange shall be financially self-supporting and shall not re-  
22 quest any financial support from the state and shall not have the power  
23 to tax or encumber state assets;

24 (c) The exchange shall be a voluntary marketplace with the purpose of  
25 preserving individual choice and facilitating the informed selection  
26 and purchase of health benefit plans by eligible individuals, eligible  
27 employers and eligible employees. Neither the exchange nor any agency  
28 of the state of Idaho shall require any person to use or participate in  
29 the exchange, nor have the authority to impose upon or collect from a  
30 person any penalty for failure or refusal to participate in the exchange  
31 or to purchase a health benefit plan or stand-alone dental plan;

32 (d) The exchange shall not prohibit a health carrier from participating  
33 in the exchange or prohibit a health benefit plan or stand-alone den-  
34 tal plan from being sold in the exchange so long as the health carrier or  
35 health benefit plan or stand-alone dental plan meets all requirements  
36 of applicable law and any requirements of the exchange consistent with  
37 this chapter;

38 (e) The exchange shall not attempt to prohibit or preclude a health car-  
39 rier from offering insurance or a stand-alone dental plan outside the  
40 exchange;

41 (f) The exchange shall not prohibit a producer from participating in  
42 the exchange, and any producer participating in the exchange shall be  
43 entitled to payment for his services through written fee agreements  
44 with the individuals or small employers utilizing the services of said  
45 producer or through commissions offered by health carriers participat-  
46 ing in the exchange;

47 (g) The state of Idaho shall not be liable for any obligations of the  
48 exchange; and

49 (h) The board shall not be liable for any obligations of the exchange.  
50 No member of the board shall be liable, and no cause of action of any

1 nature may arise against them, for any act or omission related to the  
2 performance of their powers and duties under this chapter, unless such  
3 act or omission constitutes willful or wanton misconduct. The board may  
4 provide for indemnification of, and legal representation for, its mem-  
5 bers.

6 41-6106. REPORT. (1) The exchange shall submit a written report of its  
7 activities and the condition of the exchange to the director, the governor  
8 and the director of the legislative services office for distribution to all  
9 legislators on or before January 31, 2014, and annually on or before each  
10 January 31 thereafter. The exchange shall also report to the appropriate  
11 senate and house of representatives germane committees on any changes to its  
12 bylaws or policies and any changes or updates from the federal department of  
13 health and human services (HHS) regarding essential health benefits or oper-  
14 ation or conditions of the exchange on or before January 31, 2014, and annu-  
15 ally on or before each January 31 thereafter.

16 (2) For any changes by the board to the fee schedule charged to exchange  
17 users or participants, the exchange shall, at the next legislative session,  
18 report to the appropriate senate and house of representatives germane com-  
19 mittees on or before January 31.

20 SECTION 2. That Section 2 of Senate Bill No. 1042, as enacted by the  
21 First Regular Session of the Sixty-second Idaho Legislature, be, and the  
22 same is hereby amended to read as follows:

23 SECTION 2. An emergency existing therefor, which emergency is  
24 hereby declared to exist, this act shall be in full force and ef-  
25 fect on and after its passage and approval. Provided however, that  
26 should the Federal Department of Health and Human Services (HHS)  
27 and/or the United States Congress change both the establishment  
28 date and the eligibility limitation date for federal grants for  
29 the exchange, the Governor shall, upon his determination that such  
30 events have occurred, issue a proclamation declaring that Idaho  
31 will not be obligated to comply until the new dates are set by HHS  
32 and/or the United States Congress. The Governor shall file such  
33 proclamation with the Secretary of State.