

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 199

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO SELF-FUNDED HEALTH CARE PLANS; AMENDING SECTION 41-4001, IDAHO
2 CODE, TO REVISE THE DECLARATION OF PURPOSE AND TO PROVIDE FOR THE IN-
3 CLUSION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS; AMENDING SECTION
4 41-4002, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE TERMS; AMEND-
5 ING SECTION 41-4003, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE
6 REGISTRATION OF PLANS, TO REVISE PROVISIONS RELATING TO EXCEPTIONS TO
7 REGISTRATION, TO PROVIDE THAT CERTAIN PLANS OFFERING ONLY DENTAL AND/OR
8 VISION BENEFITS SHALL NOT BE REQUIRED TO REGISTER, TO PROVIDE FOR PLANS
9 ENGAGED IN BUSINESS WITHOUT AUTHORIZATION, TO PROVIDE THAT CERTAIN
10 PLANS SHALL BE SUBJECT TO ALL SANCTIONS PROVIDED BY LAW, TO PROVIDE
11 FOR SPECIFIED NOTICE TO STUDENT PARTICIPANTS AND PROSPECTIVE STUDENT
12 PARTICIPANTS AND TO PROVIDE CERTAIN RESTRICTIONS FOR PLANS RELATING TO
13 OPERATION AND REGISTRATION; AMENDING SECTION 41-4004, IDAHO CODE, TO
14 PROHIBIT THE DIRECTOR OF THE DEPARTMENT OF INSURANCE FROM REGISTERING
15 ANY SELF-FUNDED PLAN UNLESS SPECIFIED REQUIREMENTS ARE MET, TO REVISE
16 AND TO PROVIDE SUCH REQUIREMENTS, TO REQUIRE THE TRUSTEE TO FILE SPEC-
17 IFIED DOCUMENTS WITH THE DIRECTOR AND TO REQUIRE THE TRUSTEE TO NOTIFY
18 THE DIRECTOR IF THE SURPLUS OF THE TRUST FALLS BELOW THE MINIMUM SURPLUS
19 REQUIREMENTS; AMENDING SECTION 41-4005, IDAHO CODE, TO REVISE AND TO
20 PROVIDE FOR APPLICATIONS FOR REGISTRATION, TO REVISE AND TO PROVIDE
21 FOR DOCUMENTS THAT ARE TO ACCOMPANY APPLICATIONS AND TO REMOVE A DEFINI-
22 TION; AMENDING SECTION 41-4006, IDAHO CODE, TO REVISE AND TO PROVIDE
23 FOR ACTION UPON APPLICATIONS BY THE DIRECTOR, TO REMOVE A PROVISION RE-
24 LATING TO CHALLENGES OF REFUSALS TO REGISTER, TO REVISE PROVISIONS RE-
25 LATING TO INVESTIGATION BY THE DIRECTOR, TO REVISE PROVISIONS RELATING
26 TO THE ISSUANCE AND DELIVERY OF CERTIFICATES OF REGISTRATION, TO REMOVE
27 A PROVISION RELATING TO REFUSAL TO REGISTER AND NOTICE OF REFUSAL, TO
28 PROVIDE FOR NOTICES OF DENIAL OF REGISTRATION, TO PROVIDE FOR REQUESTS
29 FOR HEARING AND TO PROVIDE THAT FAILURE TO REQUEST A HEARING WITHIN A
30 SPECIFIED TIME SHALL BE DEEMED A WAIVER OF THE OPPORTUNITY FOR HEARING;
31 AMENDING SECTION 41-4007, IDAHO CODE, TO REVISE VERBIAGE RELATING TO
32 THE AUTHORITY OF TRUST FUNDS; AMENDING SECTION 41-4008, IDAHO CODE, TO
33 REVISE PROVISIONS RELATING TO LIABILITY, TO REVISE PROVISIONS RELATING
34 TO FIDUCIARY FUNDS, TO REMOVE A PROVISION RELATING TO AN EXCEPTION TO
35 THE PROHIBITION ON GARNISHMENT OR LEVY AND TO PROVIDE FOR THE DEPOSIT
36 AND HOLDING OF CERTAIN MONEYS; AMENDING SECTION 41-4009, IDAHO CODE, TO
37 REVISE PROVISIONS RELATING TO THE INVESTMENT OF TRUST FUNDS, TO REVISE
38 PROVISIONS RELATING TO THE PROHIBITION OF CERTAIN INVESTMENTS, TO RE-
39 MOVE AN EXCEPTION TO THE PROHIBITION OF CERTAIN INVESTMENTS, TO PROVIDE
40 THAT THE INTEREST AND YIELD ON INVESTMENTS SHALL INURE TO THE BENEFIT OF
41 THE TRUST FUND, TO REVISE ADDITIONAL REQUIREMENTS RELATING TO INVEST-
42 MENTS, TO REVISE PENALTY PROVISIONS AND TO MAKE A TECHNICAL CORRECTION;
43 AMENDING SECTION 41-4010, IDAHO CODE, TO REVISE AND TO PROVIDE FOR RE-
44 SERVES, TO PROVIDE THAT CONTRIBUTION DEFICIENCY RESERVES SHALL CONSTI-
45

1 TUTE LIABILITIES, TO REVISE SURPLUS PROVISIONS, TO PROVIDE FOR SURPLUS
2 NOTES, TO PROVIDE THAT CERTAIN FUNDING CANNOT BE IN THE FORM OF PREPAID
3 CONTRIBUTIONS OR OTHER LOAN OR ASSOCIATED WITH AN OFFSETTING LIABILITY,
4 TO PROVIDE FOR THE TIME IN WHICH PLANS MUST MEET SURPLUS REQUIREMENTS
5 AND TO PROVIDE THAT TRUST FUNDS SHALL MAINTAIN MINIMUM SURPLUS REQUIRE-
6 MENTS AT ALL TIMES THROUGHOUT THE YEAR; AMENDING SECTION 41-4011, IDAHO
7 CODE, TO REVISE AND TO PROVIDE FOR RECORDS AND ACCOUNTS, TO PROVIDE THAT
8 AUDITS OF THE PLAN OR TRUST SHALL BE COMPLETED INDEPENDENT OF ANY OTHER
9 ENTITY, TO REVISE AND TO PROVIDE FOR ANNUAL STATEMENTS, TO PROVIDE FOR
10 CERTIFIED ACTUARIAL OPINIONS, TO PROVIDE FOR THE MANNER IN WHICH THE
11 STATEMENT SHALL BE PREPARED, TO PROVIDE FOR RETENTION OF THE ACTUAR-
12 IAL WORK PAPERS, TO PROVIDE FOR FILING OF THE STATEMENTS AND CERTIFIED
13 ACTUARIAL OPINION WITH THE DIRECTOR AND TO PROVIDE FOR THE FILING OF
14 PERIODIC SUPPLEMENTAL UNAUDITED FINANCIAL REPORTS; AMENDING SECTION
15 41-4012, IDAHO CODE, TO REVISE AND TO PROVIDE FOR TAXES, TO PROVIDE FOR
16 BACK TAXES AND SANCTIONS, TO PROVIDE FOR PREEMPTION RELATING TO CER-
17 TAIN TAXES, TO PROVIDE THAT SPECIFIED TAXES AND FEES SHALL BE IN LIEU OF
18 INCOME AND EXCISE TAXES, LICENSE AND FEES PAYABLE TO THE STATE AND TO
19 REVISE PROVISIONS RELATING TO REMITTANCE OF TAX PAYMENTS BY THE DIREC-
20 TOR; AMENDING SECTION 41-4013, IDAHO CODE, TO REVISE AND TO PROVIDE FOR
21 THE EXAMINATION OF BOOKS, RECORDS, ACCOUNTS AND AFFAIRS OF SELF-FUNDED
22 PLANS, TO REVISE PROVISIONS RELATING TO THE EXAMINER'S REPORT AND TO
23 REVISE PROVISIONS RELATING TO RECOMMENDED CORRECTIONS OR CHANGES BY THE
24 TRUSTEE; AMENDING SECTION 41-4014, IDAHO CODE, TO REVISE AND TO PROVIDE
25 FOR TRUSTEES, TO PROVIDE THAT A POSTSECONDARY EDUCATIONAL INSTITUTION
26 AS A PLAN SPONSOR OF A SELF-FUNDED PLAN SHALL BE NEITHER A TRUSTEE NOR AN
27 ADMINISTRATOR OF SUCH PLAN, TO REVISE AN EXCEPTION PROVISION RELATING
28 TO TRUSTEES AND ADMINISTRATORS, TO REMOVE A PROVISION RELATING TO CER-
29 TAIN LICENSURE, TO REVISE PROVISIONS RELATING TO FIDELITY BONDS OR SIM-
30 ILAR COVERAGE AND TO PROVIDE THAT ADMINISTRATORS MUST BE LICENSED AND
31 BONDED; AMENDING SECTION 41-4015, IDAHO CODE, TO REVISE AND TO PROVIDE
32 FOR PROHIBITED PECUNIARY INTERESTS IN PLAN MANAGEMENT AND TO REVISE
33 PROVISIONS RELATING TO THE REMOVAL OF OR IMPOSITION OF RESTRICTIONS ON
34 TRUSTEES; AMENDING SECTION 41-4017, IDAHO CODE, TO REVISE PROVISIONS
35 RELATING TO THE DEPLETION OF FUNDS AND TO PROVIDE FOR SANCTIONS; AMEND-
36 ING SECTION 41-4018, IDAHO CODE, TO REVISE AND TO PROVIDE FOR TERMINA-
37 TIONS OF REGISTRATION; AMENDING SECTION 41-4019, IDAHO CODE, TO REVISE
38 LIQUIDATION PROVISIONS, TO PROVIDE FOR APPROVAL OF LIQUIDATION PLANS
39 BY THE DIRECTOR, TO REVISE PROVISIONS RELATING TO ASSUMPTION OF UNPAID
40 CLAIMS AND OBLIGATIONS, TO PROVIDE FOR THE SUBMISSION OF THIRD-PARTY
41 CONTRACTS TO THE DEPARTMENT AND TO PROVIDE FOR THE APPLICABILITY OF
42 SPECIFIED STATUTES AND RULES; AMENDING SECTION 41-4020, IDAHO CODE,
43 TO REVISE VERBIAGE RELATING TO RULEMAKING; AMENDING SECTION 41-4021,
44 IDAHO CODE, TO SPECIFY APPLICABLE LAW; AMENDING SECTION 41-4022, IDAHO
45 CODE, TO REVISE AND TO PROVIDE FOR PENALTIES, TO PROVIDE FOR SPECIFIED
46 DISCRETIONARY ACTION BY THE DIRECTOR IN ADDITION TO PENALTY PROVISIONS
47 AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 41-4023, IDAHO
48 CODE, TO REVISE COVERAGE PROVISIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

1 SECTION 1. That Section 41-4001, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 41-4001. DECLARATION OF PURPOSE. (1) ~~It is t~~The purpose of this chap-
4 ter is to recognize and provide reasonable ~~public~~ supervision of self-funded
5 or partially self-funded plans for provision of health care service bene-
6 fits to employees or to students of a postsecondary educational institution
7 in connection with or as an alternative to insurance and other prepayment
8 plans, to provide standards for financial soundness of such plans, to pro-
9 tect the interests of employees or students covered thereby and to provide
10 for the establishment of financially viable alternatives to traditional
11 health care arrangements plans. The legislature of the state of Idaho
12 declares that the existence and operation of such self-funded plans are mat-
13 ters of legislative concern, vitally affecting the rights and interests of
14 the citizens of this state.

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

21 SECTION 2. That Section 41-4002, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 41-4002. DEFINITIONS. For the purposes of this chapter unless context
24 otherwise requires:

25 (1) "Administrator" is a person, if other than the trustee, ~~appointed~~
26 ~~by the plan sponsor or employed or contracted~~ by the trustee to provide ad-
27 ministrative services to a self-funded plan.

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

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

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

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

40 (6) "Director" is the director of the department of insurance ~~of this~~
41 state.

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

45 (68) "Multiple employer welfare arrangement" ~~or "multiple employer~~
46 welfare plan" shall have the same meaning as that given to ~~such the~~ term
47 "multiple employer welfare arrangement" by the employee retirement income
48 security act of 1974, as amended.

1 (79) "Person" is any individual, corporation, limited liability com-
 2 pany, partnership, association, firm, syndicate, organization, educational
 3 institution or any other public or private entity organized or recognized
 4 under the laws of the state of Idaho.

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

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

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

19 (913) "Self-funded plan" or "plan" is any single employer plan or mul-
 20 multiple employer welfare arrangement plan, or any other single or multiple
 21 employer plan, or any postsecondary educational institution student health
 22 benefit plan, other than a plan providing only benefits under title 72,
 23 Idaho Code, under which payment for medical, surgical, hospital, and other
 24 services for prevention, diagnosis, or treatment of any disease, injury, or
 25 bodily condition of an employee is, or is to be, regularly provided for or
 26 promised from funds created or maintained in whole or in part by contribu-
 27 tions or payments thereto by the employer or employers, or by the employer
 28 or employers and the employees, and or by a postsecondary educational in-
 29 stitution and students at said institution, or students of a postsecondary
 30 educational institution, who are not otherwise covered by insurance or con-
 31 tract with a health care service corporation or managed care organization
 32 authorized to transact business in this state.

33 (104) "Single employer" is any individual, sole proprietorship, busi-
 34 ness, partnership, corporation, limited liability company, firm or any
 35 other form of legally recognized entity or a group of two (2) or more em-
 36 ployers under "common control" as defined in section 3(40)(B)(iii) of the
 37 employee retirement ~~system~~ income security act of 1974, as amended.

38 (15) "Student" is an individual enrolled in a postsecondary educational
 39 institution.

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

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

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

49 SECTION 3. That Section 41-4003, Idaho Code, be, and the same is hereby
 50 amended to read as follows:

1 41-4003. REGISTRATION REQUIRED -- EXEMPTIONS -- NOT SUBJECT TO INSUR-
 2 ANCE CODE. (1) No person shall offer or operate a self-funded plan in this
 3 state ~~except while~~ unless the plan is registered with the director as here-
 4 inafter provided.

5 (2) No registration shall be required of:

6 (a) Any self-funded plan established for the sole purpose of funding
 7 the dollar amount of a deductible clause contained in the provisions of
 8 an insurance contract issued by an insurer duly authorized to transact
 9 disability insurance in this state if the deductible does not exceed
 10 an amount applicable to each beneficiary of ~~two~~ five thousand dollars
 11 (\$25,000) per annum and the total of all obligations to all benefi-
 12 ciaries insured under the plan arising out of the application of such
 13 a deductible does not exceed the aggregate amount of ~~two~~ five hundred
 14 thousand dollars (\$2500,000) in any one (1) year.

15 (b) Any plan established and maintained for the purpose of complying
 16 with any worker's compensation law or unemployment compensation dis-
 17 ability insurance law.

18 (c) Any plan administered by or for the federal government or agency
 19 thereof or any county of this state.

20 (d) Any plan which is primarily for the purpose of providing first aid
 21 care and treatment, ~~at a dispensary of~~ by an employer, for injury or
 22 sickness of employees while engaged in their employment.

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

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

39 (4) Any self-funded plan providing benefits to more than one (1) em-
 40 ployer shall provide to each employer participant and to each prospective
 41 employer participant written notice that the plan is not insurance and does
 42 not participate in the state Idaho life and health guaranty association.
 43 Any self-funded plan providing benefits to students of a postsecondary
 44 educational institution shall provide to each student participant and to
 45 each prospective student participant written notice that the plan is not
 46 insurance and does not participate in the Idaho life and health guaranty
 47 association. The notice shall also be included as part of all marketing ma-
 48 terials used by or on behalf of the plan.

49 (5) Any plan registered as a single employer plan or as a multiple em-
 50 ployer welfare plan shall not operate as or be registered as a postsecondary

1 educational institution student health benefit plan. Any plan registered as
 2 a postsecondary educational institution student health benefit plan shall
 3 not operate as or be registered as a single employer plan or as a multiple em-
 4 ployer welfare plan.

5 SECTION 4. That Section 41-4004, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

7 41-4004. PLAN REQUIREMENTS. ~~No (1) The director shall not register any~~
 8 ~~self-funded plan shall register, and the director shall not register a self-~~
 9 ~~funded plan, which does not meet under this chapter unless the following re-~~
 10 ~~quirements are met:~~

11 (1a) The plan must require all contributions to be paid in advance and
 12 to be deposited in and disbursed from a trust fund duly created ~~and ex-~~
 13 ~~isting under an adequate by~~ a written irrevocable trust agreement be-
 14 tween the employer or employers and the trustee, ~~or between the postsec-~~
 15 ~~ondary educational institution and the trustee,~~ that meets the terms of
 16 this chapter.

17 (2b) ~~The plan must have, or provide for, a trustworthy and responsible~~
 18 ~~shall appoint a trustee, and for competent administration of who demon-~~
 19 ~~strates the character, fitness and competence to function in such role~~
 20 ~~and whose function shall be to competently manage and administer the~~
 21 ~~trust fund and plan.~~

22 (3c) ~~With regard to single employer plans or multiple employer welfare~~
 23 ~~plans, tThe plans must require that employers contribute to the trust~~
 24 ~~fund, and that all contributions, if any, by employees, if any, shall be~~
 25 ~~by regular periodic payroll deductions, except as to contributions made~~
 26 ~~by an employee during his absence from such employment for such period~~
 27 ~~as the plan may reasonably provide.~~

28 (4d) ~~The plan must provide that the administrator or trustee on behalf~~
 29 ~~of the trust fund, as the case may be, shall furnish to each employee-~~
 30 ~~beneficiary or each student-beneficiary a copy of the plan, which shall~~
 31 ~~include a written statement or schedule adequately and clearly stating~~
 32 ~~all benefits currently allowable provided under the plan, together with~~
 33 ~~as well as all applicable restrictions, limitations, and exclusions,~~
 34 ~~and the procedure for filing a claim for benefits.~~

35 (5e) ~~The plan must shall require that the trust fund be actuarially~~
 36 ~~sound. ; that is, a~~ Assets and income of the trust fund ~~must shall at all~~
 37 ~~times be reasonably adequate under reasonable estimates to provide for~~
 38 ~~full payment of all benefits promised to beneficiaries by the plan and~~
 39 ~~to cover all other costs of operation. The initial contribution rates~~
 40 ~~shall be calculated by a qualified actuary and shall include a reason-~~
 41 ~~able provision for adverse deviation and a reasonable contribution to~~
 42 ~~surplus.~~

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

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

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

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

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

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

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

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

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

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

24 SECTION 5. That Section 41-4005, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 41-4005. APPLICATION FOR REGISTRATION -- FEE. (1) Application for
 27 registration of a self-funded plan shall be made to the director, on forms
 28 ~~furnished and designed prescribed by him for the purpose of eliciting the~~
 29 ~~director, seeking such information as to~~ concerning whether, in the opinion
 30 of the director, the plan is qualified for registration. The application
 31 shall require the applicant to designate whether the plan is applying for
 32 registration as a single employer plan or multiple employer welfare plan or
 33 as a postsecondary educational institution student health benefit plan. The
 34 application shall be signed and verified by at least one (1) ~~of the employers~~
 35 ~~and employer or, if applicable, by a person authorized by a postsecondary~~
 36 educational institution to sign the application and at least one (1) ~~of the~~
 37 plan trustees. If the employer, postsecondary educational institution, or
 38 trustee is a corporation, the verification shall be by a duly authorized cor-
 39 porate officer or by a managing member of the plan sponsor if the plan sponsor
 40 is a limited liability company.

41 (2) The application shall be accompanied by all plan documents includ-
 42 ing:

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

45 (b) A copy of the proposed written statement of benefits ~~referred to~~
 46 referenced in section 41-4004(41) (d), Idaho Code;

47 (c) A financial statement of the trust fund, if already in existence and
 48 operating at the time of application, certified by an independent cer-
 49 tified public accountant. If the trust fund is not in existence at the

1 time of application, a pro forma balance sheet for the start of opera-
 2 tion of the plan and a pro forma balance sheet, by month, for the ~~end of~~
 3 ~~the~~ first twelve (12) months of operation of the plan shall accompany
 4 the application, provided ~~the~~ that all balance sheets shall include ac-
 5 tuarially determined claims liabilities;

6 (d) A written statement of reasonably projected income and disburse-
 7 ments of the trust fund, by month, for the twelve (12) month period com-
 8 mencing with ~~date of application and showing also the amount reserved as~~
 9 ~~of the end of such period for claims incurred and not paid or incurred~~
 10 ~~and not reported, certified~~ the effective date of registration of the
 11 trust with the department and including changes to claims liabilities
 12 fully set forth in the monthly expenses as calculated by a qualified ac-
 13 tuary;

14 (e) A copy of an actuarial study prepared by a qualified actuary
 15 ~~determining adequate~~ certifying that the rates for the plan are suf-
 16 ficient to cover moderately adverse experience and all costs of oper-
 17 ation. The study shall include the development and justification of
 18 the assumptions used by the actuary in determining the rates. The rates
 19 shall not be less than the sum of projected incurred claims for the year,
 20 plus costs of operation, plus any prior year deficiency, less any excess
 21 surplus prior to the establishment of the contribution deficit reserve;

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

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

28 (h) A copy of a stop-loss insurance agreement issued by an insurer au-
 29 thorized to do business in this state providing both specific and aggre-
 30 gate coverage in an amount as annually indicated in the actuarial opin-
 31 ion for the plan, provided the director may waive the requirements for
 32 aggregate stop-loss coverage if such coverage is not reasonably avail-
 33 able or otherwise deemed appropriate;

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

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

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

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

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

48 (3) ~~If the applicant is a multiple employer welfare arrangement, t~~The
 49 application shall be signed under oath by the plan sponsor or the trustee of
 50 the plan, and the application shall also include:

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

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

13 (c) A copy of the articles of incorporation, bylaws ~~or~~, if any, and ir-
14 revocable trust agreement that governs of the plan, as well as any other
15 document concerning the operation of the plan.

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

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

20 ~~(6) For purposes of this section, a qualified actuary is an actuary hav-~~
21 ~~ing experience in establishing rates for a self-funded plan and the health~~
22 ~~services being provided, and who is also a fellow of the society of actuar-~~
23 ~~ies, a member of the American academy of actuaries, or an enrolled actuary~~
24 ~~under the employee retirement income security act of 1974.~~

25 SECTION 6. That Section 41-4006, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 41-4006. GRANT OR DENIAL OF REGISTRATION. (1) The director shall act
28 upon an application for registration of a self-funded plan with all reason-
29 able promptness, but not ~~less more~~ than ninety (90) days from the date of sub-
30 mission of a complete application to the director. Failure to act within the
31 ninety (90) day time period shall be deemed ~~to be the~~ as registration of such
32 self-funded plan by the director. ~~In the event the director refuses to reg-~~
33 ~~ister the plan, the applicant shall be entitled to challenge such refusal~~
34 ~~pursuant to chapter 2, title 41, Idaho Code, and to the contested case and ju-~~
35 ~~dicial review provisions of chapter 52, title 67, Idaho Code.~~

36 (2) ~~He~~ The director may make such investigation of the ~~proposal~~
37 application for registration as he deems advisable. If the director finds
38 that the application is complete and that the plan meets the qualifications
39 stated in sections 41-4004 and 41-4005, Idaho Code, and is otherwise con-
40 sistent with the provisions of this chapter, he shall issue and deliver a
41 certificate of registration in appropriate form to the applicant; ~~other-~~
42 ~~wise, the director shall refuse to register the plan and shall give written~~
43 ~~notice of such refusal to the applicant, stating the reasons therefor.~~

44 (3) In the event the director denies an applicant's application for
45 registration, the director shall notify the applicant in writing of the ba-
46 sis for the denial. Within twenty-one (21) days of the issuance of the notice
47 of denial, the applicant may submit to the director a written request for a
48 hearing before the director or his duly appointed representative addressing
49 the basis for the denial of the application and requesting that the director

1 reexamine the applicant's qualifications for registration. An applicant's
 2 failure to request a hearing in writing within twenty-one (21) days of the
 3 issuance of the notice of denial shall be deemed a waiver of the opportunity
 4 for hearing.

5 SECTION 7. That Section 41-4007, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

7 41-4007. TRUST FUND -- POWERS AUTHORITY. The trust fund of a
 8 self-funded plan shall have ~~power~~ the authority:

9 (1) To have and use an appropriate descriptive name;

10 (2) To sue and be sued in its own name;

11 (3) To contract in its own name. All such contracts shall be in writing
 12 and shall be signed by the trustee of the fund, and if there is more than one
 13 (1) trustee, the contract may be so executed by one (1) trustee if so autho-
 14 rized by all trustees;

15 (4) To borrow money and give security therefor; and

16 (5) To engage exclusively in transactions authorized or required by
 17 this chapter, or reasonably incidental thereto.

18 SECTION 8. That Section 41-4008, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 41-4008. TRUST FUND LIABILITY -- FIDUCIARY FUNDS. (1) The trust fund
 21 of a self-funded plan shall be legally liable for payment of all applicable
 22 benefits stated in the ~~statement or schedule of benefits~~ for such plan in ef-
 23 fect at the time a claim thereunder arises.

24 (2) Funds in the trust fund are fiduciary funds, and are not liable ~~for~~
 25 to any obligation of any plan sponsor, including any employer participant in
 26 the plan or postsecondary educational institution, nor are fiduciary funds
 27 held in the trust subject to garnishment or levy. ~~for the obligation of any~~
 28 ~~beneficiary. This clause~~ The prohibition on garnishment or levy shall not
 29 be deemed to prohibit levy upon the trust fund by any provider thereof (or
 30 its assignee) for health care services rendered to a beneficiary ~~if the trust~~
 31 ~~fund has theretofore agreed in writing to pay for the same direct to such~~
 32 ~~provider.~~

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

37 SECTION 9. That Section 41-4009, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 41-4009. INVESTMENT OF TRUST FUND. (1) The trustee may invest ~~reserves~~
 40 ~~and other~~ trust funds available for the that purpose ~~in the trust fund of a~~
 41 ~~self-funded plan~~ in the following kinds of investments only:

42 (a) General obligations of the United States government, or of any
 43 state, district, commonwealth, or territory of the United States, or
 44 of any municipality, county, or other political subdivision or agency
 45 thereof.

1 (b) Obligations, including the payment of principal and interest
2 thereon of which ~~is~~ are guaranteed by any such government or agency.

3 (c) Corporate bonds and similar obligations meeting the requirements
4 specified for investment of funds of insurers under section 41-711,
5 Idaho Code.

6 (d) Collateral loans, including payment of principal and interest of
7 which ~~is~~ are adequately secured by securities in which the trust fund
8 could lawfully invest ~~direct~~ directly.

9 (e) Deposits, savings accounts, and share accounts in ~~established~~
10 chartered banks and savings and loan associations located in the United
11 States. ~~Such~~ An investment ~~as to~~ in any one (1) such institution may not
12 be in excess of the amount covered by applicable deposit, savings, and
13 share account insurance, unless otherwise authorized by ~~at the discre-~~
14 ~~tion~~ of the director.

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

18 (2) In addition to investments excluded under subsection (1) of this
19 section, the trustee is expressly prohibited from investing trust fund mon-
20 eys in:

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

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

28 (c) Real estate property or loans thereon.

29 (d) Any personal loan, ~~other than a collateral loan referred to in sub-~~
30 ~~section (1) (d) of this section, but subject to paragraphs (a) and (b) of~~
31 ~~this subsection (2).~~

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

35 (4) No investment shall be made by or on behalf of the trust fund unless
36 authorized in writing by the trustee and ~~so shown~~ included in the records of
37 the trust fund.

38 (5) Any person who authorizes any investment of trust fund moneys in vi-
39 olation of this section shall, in addition to other ~~penalty~~ penalties that
40 may be applicable therefor, be liable for all loss suffered by the trust fund
41 on account of the investment.

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

44 SECTION 10. That Section 41-4010, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 41-4010. RESERVES AND SURPLUS. (1) A ~~The trustee of a~~ self-funded plan
47 shall establish and maintain in the trust fund the following reserves:

48 (a) A reserve in an amount as certified by ~~a member of the American~~
49 ~~academy of actuaries~~ a qualified actuary as being necessary for payment

1 of claims against the trust fund for benefits, including both claims
2 reported and not yet paid and claims incurred but not yet reported
3 liability. The reserve shall be reasonably adjusted on a quarterly ba-
4 sis in an amount as determined by a qualified actuary or other qualified
5 person if authorized by the director.

6 (b) If, under the plan, periodic contributions of either the em-
7 ployer(s) or employees to the trust fund have been paid in advance or are
8 payable less frequently than monthly, there shall be a reserve for un-
9 earned contributions as computed pro rata on the basis of the unexpired
10 portion of the period for which the contribution has been paid.

11 (c) If future claims payments plus future costs of operation are
12 greater than future contributions plus current reserves, there shall be
13 a reserve in an amount equal to future claims payments plus future costs
14 of operation, less future contributions, less current reserves.

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

18 (3) In addition to reserves required by this section, a self-funded
19 plan shall establish and maintain in its trust fund surplus equal to at least
20 thirty percent (30%) of the unpaid claims liability of the plan. A newly
21 formed plan with no prior operating history shall maintain surplus of not
22 less than ten percent (10%) of unpaid claims liability during its first year
23 of operation, not less than twenty percent (20%) of unpaid claims liability
24 during its second year of operation and not less than thirty percent (30%) of
25 unpaid claims liability at all times thereafter:

26 (a) The equivalence of three (3) months of contributions for the cur-
27 rent plan year; or

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

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

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

41 (6) A newly formed plan with no prior operating history shall meet the
42 minimum surplus requirements no later than twelve (12) months after the date
43 of initial operation. For plans registered with the department and in exis-
44 tence on the effective date of this law, such plans shall have twenty-four
45 (24) months from the effective date of this law in which to increase their
46 surplus level to comply with the requirements of subsection (3) of this sec-
47 tion.

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

1 SECTION 11. That Section 41-4011, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 41-4011. RECORDS AND ACCOUNTS -- ANNUAL STATEMENT. (1) The trustees of
4 a self-funded plan shall cause full and accurate records and accounts to be
5 entered and maintained during all times of the existence of the trust cover-
6 ing all financial transactions and affairs of the trust fund, which records
7 and accounts shall be subject to review by the director. Any audit of the
8 plan or trust shall be completed independently of any other entity.

9 (2) Within ninety (90) days after close of a fiscal year of the plan,
10 the trustee shall ~~make~~ prepare an annual statement in writing summarizing
11 the financial transactions of the trust fund for such fiscal year and ~~its~~ the
12 financial condition of the trust at the end of such year in accordance with
13 the requirements of this chapter and with generally accepted and applicable
14 accounting principles. The statement shall otherwise be in a form and re-
15 quire information as prescribed by acceptable to the director and the finan-
16 cial include such information therein shall be certified by the accountant
17 by whom such information was prepared or audited as prescribed by the direc-
18 tor. The financial information included therein shall be certified by the
19 accountant who audited such information. The trustee shall promptly deliver
20 a copy of the statement to each employer or postsecondary educational insti-
21 tution participating in the plan and keep a copy thereof on file in the busi-
22 ness office of from which the plan where it is operated. Such statement shall
23 be available for review by any beneficiary at all reasonable times for a pe-
24 riod of not less than three (3) years for review by any beneficiary from the
25 date of the statement. If the plan is managed by a third party administra-
26 tor, such statement shall be available at the administrative offices of the
27 employer or employers or postsecondary educational institution.

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

35 (4) On or before expiration of such ninety (90) day period the trustee
36 shall ~~cause~~ file an original of the annual statement ~~to be filed~~ and certi-
37 fied actuarial opinion with the director. The actuarial opinion shall be
38 filed in a form prescribed by the director. The trustee shall pay a filing
39 fee as provided for by rule. The director may grant a thirty (30) day exten-
40 sion of the time for filing the annual statement.

41 (45) The trustee shall also file quarterly supplemental unaudited fi-
42 nancial reports and other periodic supplemental unaudited financial reports
43 in a form and at the times prescribed by the director.

44 (56) The director shall transmit and account for all fees received by
45 him hereunder as provided in section 41-406, Idaho Code.

46 (67) The annual and quarterly reports required under this section are
47 public records and are available to the public, notwithstanding the exemp-
48 tions from disclosure provided in chapter 3, title 9, Idaho Code.

1 SECTION 12. That Section 41-4012, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 41-4012. TAXES. (1) ~~There is hereby levied upon~~ Each self-funded plans
4 required to be registered under this chapter is subject to the tax as pro-
5 vided for in this section. Each registered self-funded plan, and each for-
6 merly registered plan with respect to beneficiaries in this state while so
7 registered, shall coincidentally simultaneously with the filing of its an-
8 annual statement with the director, pay to the director a tax computed at the
9 rate of four cents (4¢) per month per beneficiary covered by the plan dur-
10 ing the fiscal year of the annual statement with respect to all beneficia-
11 ries working or resident in this state. Any plans operating in Idaho without
12 proper registration shall be subject to back taxes for all years the plan was
13 in operation plus all other sanctions authorized by law.

14 (2) ~~The state of Idaho hereby preempts the field of imposition of All~~
15 ~~excise, privilege, franchise, income, license and similar taxes, licenses~~
16 ~~and fees are hereby preempted from imposition upon self-funded plans and on~~
17 ~~the intangible property of their trust funds; and no county, city, municipi-~~
18 ~~ality, district, school district, or other political subdivision or agency~~
19 ~~of Idaho shall levy upon such plans or trust funds any such tax, license or~~
20 ~~fee additional to such as are levied by the legislature of Idaho those set~~
21 ~~forth in this chapter.~~

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

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

32 SECTION 13. That Section 41-4013, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 41-4013. EXAMINATION OF BOOKS, RECORDS AND ACCOUNTS. (1) The books,
35 records, accounts and affairs of a self-funded plan shall be subject to ex-
36 amination by the director, by competent qualified examiners duly authorized
37 by him in writing, at such times or intervals as the director deems advisable
38 appropriate. The purposes of the examination shall be to determine compli-
39 ance of the plan with applicable laws, the plan's financial condition, and
40 actuarial the adequacy of its the plan's trust fund, the treatment accorded
41 by the plan to its beneficiaries, and as to any other factors deemed mate-
42 rially related relevant by the director to the plan's management and opera-
43 tion.

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

47 (3) The examiner shall conduct the examination expeditiously, make his
48 prepare the report of the examination in writing, and deliver a copy thereof

1 to the trustee and the director as soon as practicable. The trustee shall
 2 have no longer than four (4) weeks after receipt of the report within which to
 3 recommend to the director such corrections or changes therein as the trustee
 4 may deem appropriate. After making such corrections or changes, if any, as
 5 he deems ~~proper~~ appropriate, the director shall file the report in his office
 6 as a document open to public inspection, and deliver to the trustee a copy of
 7 the report, ~~as so corrected or changed~~ including any modifications made to
 8 the examiner's original report as submitted to the director.

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

12 SECTION 14. That Section 41-4014, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 41-4014. TRUSTEES -- ADMINISTRATORS -- BONDING. (1) Either an indi-
 15 vidual or a corporation or other legal entity may be a trustee of the trust
 16 fund. ~~Either~~ Any person acting as a trustee is a fiduciary acting on behalf
 17 of the beneficiaries of the plan and the trust fund in such capacity. ~~An in-~~
 18 ~~dividual, firm, or corporation~~ or other legal entity may be an administrator
 19 of a plan.

20 (2) An employer participant in the plan shall be neither a trustee nor
 21 the administrator, ~~but~~. A postsecondary educational institution as a plan
 22 sponsor of a self-funded plan shall be neither a trustee nor an administra-
 23 tor of such plan. However, this provision subsection shall not be deemed to
 24 prohibit an individual who is otherwise an employee of such an employer or a
 25 postsecondary educational institution from being trustee or administrator.

26 (3) ~~Any administrator that is retained by a self-funded plan must be~~
 27 ~~licensed as an administrator pursuant to chapter 9, title 41, Idaho Code.~~
 28 The trustee shall ~~cause to be issued~~ obtain a fidelity bond, or coverage
 29 deemed by the director to be equivalent to a fidelity bond, in the name of the
 30 self-funded plan ~~protecting, the purpose of which is to protect~~ against acts
 31 of fraud and dishonesty by ~~its~~ the plan's trustees, directors, officers and
 32 employees ~~responsible for servicing the~~ in connection with the trust fund
 33 or plan. Such bond shall be in an amount equal to the greater of ten percent
 34 (10%) of the contributions received by the plan or ten percent (10%) of the
 35 benefits paid during the preceding calendar year. If the plan was not in
 36 operation during the preceding calendar year, the bond shall be in an amount
 37 equal to ten percent (10%) of the contributions projected to be received by
 38 the plan during its first year of operation. The amount of any bond required
 39 under this section shall be not less than twenty-five thousand dollars
 40 (\$25,000) or more than five hundred thousand dollars (\$500,000).

41 (4) Any administrator that is retained by a self-funded plan must be li-
 42 censed and bonded as an administrator pursuant to chapter 9, title 41, Idaho
 43 Code.

44 SECTION 15. That Section 41-4015, Idaho Code, be, and the same is hereby
 45 amended to read as follows:

46 41-4015. PROHIBITED PECUNIARY INTERESTS IN PLAN MANAGEMENT. (1) No
 47 plan sponsor, trustee, administrator, or other person having responsibility

1 for the management of a self-funded plan or the investment or other handling
2 of trust funds shall:

3 (a) Receive directly or indirectly or ~~be pecuniarily interested~~ have
4 a pecuniary interest, either directly or indirectly, in any fee, com-
5 mission, compensation, or emolument, other than salary or other sim-
6 ilar compensation regularly fixed and ~~allowed~~ authorized for services
7 regularly duly rendered to the plan, arising out of any transaction to
8 which the trust fund is or ~~is to be~~ may become a party.

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

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

14 (2) No consultant to the plan or trust fund shall directly or indirectly
15 receive or ~~be pecuniarily interested~~ have a pecuniary interest, either di-
16 rectly or indirectly, in any commission or other compensation arising out of
17 any contract or transaction between the plan or trust fund and any insurer,
18 health care service corporation, health maintenance organization or other
19 provider of health care services or of drugs or other health care needs and
20 supplies.

21 (3) The director may, after reasonable notice and the opportunity for a
22 hearing, require removal of a trustee or prohibit the trustee from employing
23 or retaining or continuing to employ or retain any person in the administra-
24 tion of the trust fund or plan, upon finding that continuation of the trustee
25 or such employment or retention involves a conflict of interest ~~not in the~~
26 ~~best interests of the plan or an interest with the potential to~~ adversely
27 affecting interests of affect plan beneficiaries.

28 SECTION 16. That Section 41-4017, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 41-4017. RECOVERY OF DEPLETED FUNDS. If after notice and the opportu-
31 nity for a hearing the director finds that any self-funded plan trust fund
32 has been depleted by reason of any wrongful or negligent act or omission of a
33 trustee or any other person, he shall transmit a copy of his findings to the
34 attorney general of this state, who may bring an action in the name of the
35 people of this state, or intervene in any action brought by or on behalf of
36 an employer or beneficiary, for the recovery of the amount of such depletion,
37 for the benefit of the trust fund, and to impose any sanctions as authorized
38 by law.

39 SECTION 17. That Section 41-4018, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 41-4018. TERMINATION OF REGISTRATION. (1) The director shall ter-
42 minate the registration of a self-funded plan upon written request of the
43 trustee, or if he finds, after an inquiry or an examination, that the trust
44 fund is insolvent. For the purposes of this ~~section~~ chapter, "insolvent"
45 means the plan is unable to pay its obligations when they are due or that
46 its assets do not exceed its liabilities. As used in this ~~section~~ chapter,

1 "assets" means all investments held in the name of the trust as permitted by
2 section 41-4009, Idaho Code.

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

9 (a) That the plan no longer meets the qualifications required by sec-
10 tions 41-4004 and 41-4005, Idaho Code, and that the such deficiency will
11 not or cannot be remedied within a reasonable time;

12 (b) That ~~as a matter of frequent practice there is a pattern of bene-~~
13 fits promised by the plan that are not being fairly and promptly paid;

14 (c) That the cost of administering the plan is excessive in relation to
15 the character and volume of service being rendered in the administra-
16 tion; ~~or~~

17 (d) That the trust fund has been subject to fraudulent, incompetent or
18 dishonest practices on the part of the trustee, administrator, consul-
19 tant, any participating employer, or any postsecondary educational in-
20 stitution, beneficiaries or others; or

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

23 (3) The director shall ~~se~~ terminate the plan's registration by his
24 written order given provided to the trustee last of record with the depart-
25 ment and to each employer or postsecondary educational institution last of
26 record a participant in the plan. The with the department. Such order shall
27 state the grounds upon which made it is based and its effective date. The
28 order shall be subject to judicial review in the same manner as applies to
29 official orders of the director in general.

30 SECTION 18. That Section 41-4019, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 41-4019. LIQUIDATION OF TRUST FUND. (1) Upon termination of registra-
33 tion of the plan, the trust fund of a self-funded plan shall be liquidated as
34 soon as practicable.

35 (2) Liquidation of a solvent self-funded plan shall be conducted by
36 its trustee under a plan of liquidation in writing filed with and approved
37 by the director, found by the director to be as fair and equitable to all
38 persons having a pecuniary interest in the trust fund, ~~and approved by him.~~
39 Any balance remaining after payment or adequate provision for all claims
40 and charges against the trust fund shall be disposed of in such manner as is
41 provided for in the plan of liquidation. Unless ~~under~~ the plan of liquida-
42 tion, provides that liability for all unpaid claims and obligations of the
43 trust fund has been unconditionally assumed by other financially respon-
44 sible person or persons and the third party contract has been submitted to
45 the department for its review, the existence of surplus funds for such dis-
46 position shall not be determined prior to expiration of two (2) years after
47 termination of the registration.

48 (3) The liquidation of an insolvent self-funded plan shall be carried
49 out by the director in accordance with chapter 33, title 41, Idaho Code (re-

1 habilitation and liquidation). ~~and~~ For this purpose, the self-funded
2 plan shall be deemed to be an insolvent domestic insurer and subject to all
3 statutes and rules applicable to the same.

4 SECTION 19. That Section 41-4020, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 41-4020. RULES. (1) The director may ~~make~~ promulgate reasonable rules
7 necessary for or as an aid to effectuation of any provision of this chapter.
8 No such rule shall extend, modify, or conflict with any provision of this
9 chapter and the reasonable implications thereof.

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

12 SECTION 20. That Section 41-4021, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 41-4021. OTHER PROVISIONS APPLICABLE. Chapter 2, title 41, Idaho
15 Code, (the director of the department of insurance), chapter 9, title 41,
16 Idaho Code, (insurance administrators), chapter 13, title 41, Idaho Code,
17 (trade practices and frauds), chapter 56, title 41, Idaho Code, (prompt
18 payment of claims), chapter 59, title 41, Idaho Code, (external review),
19 section 41-1845, Idaho Code, (recreational-related activities), sections
20 41-2141 and 41-2216, Idaho Code, (coordination with social security bene-
21 fits), and section 41-2841, Idaho Code, (borrowed surplus), to the extent
22 applicable and not in conflict with the express provisions of this chapter,
23 shall also apply with respect to self-funded plans, and for the purpose such
24 plans shall be deemed to be "insurers."

25 SECTION 21. That Section 41-4022, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 41-4022. PENALTIES. (1) Any person who ~~willfully~~ violates or causes or
28 induces violation of any provision of this chapter, or any lawful rule of the
29 director issued thereunder, shall be subject to an administrative penalty
30 for each violation of not more than one thousand dollars (\$1,000) for an in-
31 dividual and not more than five thousand dollars (\$5,000) for any entity for
32 each violation.

33 (2) Any person who makes a false statement or representation of a mate-
34 rial fact, knowing it to be false, or who knowingly fails to disclose a mate-
35 rial fact in any application, examination, or statement ~~required under this~~
36 ~~chapter or by lawful rule of the director thereunder~~ relating to self-funded
37 plans, trust accounts, administration of a plan or any matter materially re-
38 lated thereto, shall be subject to penalty as provided in subsection (4) of
39 this section.

40 (3) Any person who makes a false entry in any book, record, state-
41 ment, or report required by this chapter or ~~lawful~~ any rule of the director
42 promulgated thereunder ~~to be kept by him for any self-funded plan,~~ with in-
43 tent to injure or defraud the trust fund or any beneficiary thereunder, or
44 to deceive anyone authorized or entitled to examine the affairs of the plan,
45 shall be subject to penalty as provided in subsection (4) of this section.

1 (4) For each such violation, act or omission referred to in subsections
 2 (2) and (3) of this section, unless greater penalty is provided therefor un-
 3 der any other applicable law, the offender shall upon conviction thereof be
 4 subject to a fine of not more than fifteen thousand dollars (\$15,000) and to
 5 imprisonment for not more than fifteen (15) years, or to both such fine and
 6 imprisonment.

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

8 (a) Order the person to cease and desist from the violation of such pro-
 9 vision;

10 (b) Issue an order revoking or suspending the registration of the plan
 11 that engaged in such violation;

12 (c) Bring an action in the fourth district court in and for Ada county
 13 or in such other court as the director deems appropriate to seek appro-
 14 priate injunctive relief and impose a civil penalty not to exceed five
 15 thousand dollars (\$5,000) for each violation.

16 SECTION 22. That Section 41-4023, Idaho Code, be, and the same is hereby
 17 amended to read as follows:

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

42 (a) ~~The d~~ate the child is removed permanently from that placement and
 43 the legal obligation terminates; or

44 (b) The date the covered family rescinds, in writing, the agreement of
 45 adoption or agreement assuming financial responsibility.

46 No such plan may be issued or amended if it contains any disclaimer,
 47 waiver, or other limitation of coverage relative to the coverage or insura-
 48 bility of newborn or adopted children or infants of a covered family, which

1 child or children are covered from and after the moment of birth that is in-
2 consistent with the provisions of this section.

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

11 (3) No self-funded plan which provides maternity benefits for a per-
12 son covered continuously from conception shall be issued, amended, deliv-
13 ered, or renewed in this state on or after January 1, 1977, if it contains
14 any exclusion, reduction, or other limitations as to coverage, deductibles,
15 or coinsurance provisions as to involuntary complications of pregnancy, un-
16 less such provisions apply generally to all benefits paid under the plan. If
17 a fixed amount is specified in such plan for surgery, the fixed amounts for
18 surgical procedures involving involuntary complications of pregnancy shall
19 be commensurate with other fixed amounts payable for procedures of compar-
20 able difficulty and severity. In a case where a fixed amount is payable for
21 maternity benefits, involuntary complications of pregnancy shall be deemed
22 an illness and entitled to benefits otherwise provided by the plan. Where
23 the plan contains a maternity deductible, the maternity deductible shall ap-
24 ply only to expenses resulting from normal delivery and cesarean section de-
25 livery; however, expenses for cesarean section delivery in excess of the de-
26 ductible shall be treated as expenses for any other illness under the plan.
27 This subsection shall apply to all self-funded plans except any such plan
28 made subject to an applicable collective-bargaining agreement in effect be-
29 fore January 1, 1977.

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

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

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

42 (5) Any new or renewing self-funded group disability plan or blanket
43 disability plan delivered or issued for delivery in this state shall provide
44 that an unmarried child under the age of ~~twenty-fivesix~~ twenty-six (256) years ~~and who~~
45 ~~receives more than one-half (1/2) of his financial support from the parent~~
46 shall be permitted to remain on the parent's or parents' plan. Further, any
47 unmarried child of any age who is medically certified as disabled and finan-
48 cially dependent upon the parent is permitted to remain on the parent's or
49 parents' plan.