

IDAHO HEALTH INSURANCE EXCHANGE CONFLICT OF INTEREST POLICY

This Conflict of Interest Policy (“**Policy**”) governs the members of the Board of the Idaho Health Insurance Exchange. Except as otherwise defined in this Policy, capitalized terms have the meanings given in Appendix A.

1. Background and Overview.

A. Governance and Representation of Constituencies. The Exchange is supervised and controlled by the Board, which is comprised of nineteen (19) Members. Pursuant to the Enabling Act, each of the fourteen (14) Governor-appointed voting Members of the Board is drawn from and represents, in the management and direction of the Exchange, the interests and perspectives of a specific constituency – i.e., health insurance carriers, health insurance producers, consumers, small employers, and health care providers. The Board also includes three legislators who, together with the Governor’s appointees, are the Board’s voting Members. The other two Board Members – the Directors of the Idaho Department of Insurance and the Idaho Department of Health and Welfare – are ex officio nonvoting Members.

B. Enabling Act Implementation. The Enabling Act addresses certain aspects of Board Member conflicts of interest, including disclosure and abstention from voting. The Enabling Act distinguishes pecuniary benefit or detriment inuring to the individual Board Member (or certain related persons) from pecuniary benefit or detriment inuring to the constituency represented by the Board Member. This Policy provides guidelines for Board Members to satisfy the Enabling Act’s conflict of interest requirements.

2. Conflicts of Interest. Appendix A includes the technical definition of the term “Conflict of Interest” and related terminology. Conceptually, a Conflict of Interest arises when a Board Member’s personal interests could reasonably be expected to influence the Board Member’s judgment affecting the best interests of the Exchange or the interests of Idaho individual or small business consumers of health insurance. A Board Member’s personal interests include the interests of any Member of Household or Business Affiliate.

A. Identification of Conflicts of Interest. As described in Section 3 below in more detail, a Board Member must disclose any known or possible Conflict of Interest (a) in a questionnaire completed promptly following appointment (or, in the case of the initial Board Members, promptly following adoption of this Policy) and annually thereafter during the Board Member’s term of office and (b) immediately, whether it arises in connection with a specific matter under consideration by the Board, or if it is reasonably anticipated a conflict might arise, even though the Board may not yet have taken action. If unsure whether a Conflict of Interest exists, the Board Member should work with the Board Chairperson and legal counsel to make that determination. The Board Chairperson should make a brief oral report to the Board for inclusion in the minutes stating the existence and nature of the Conflict of Interest. Any Board Member may object to the determination and request the matter be referred to the full Board.

B. Duty to Disclose Conflicts of Interest. Promptly upon determining that a Conflict of Interest exists or may exist, a Board Member must make Required Disclosure. The test for disclosure is whether an independent third party could reasonably perceive a Conflict of Interest, not whether a Conflict of Interest in fact exists. If a situation arises that constitutes or might constitute a Conflict of Interest, the conflicted Board Member should make the Required Disclosure to the Board Chairperson (or, if the conflicted Board Member is the Board Chairperson, the Required Disclosure should be made to the Vice-Chairperson). If the Exchange's Board Members, officers, or employees perceive that a Board Member has a conflict of interest, they should also immediately disclose the circumstances. Prior to Board or Committee meetings, the Exchange's executive staff will attempt to review the meeting agenda for items that might create a conflict for any Board Member otherwise entitled to participate in the meeting.

3. Procedure to Resolve Conflicts of Interest.

A. Disclosure by Board Member. A Board Member should (i) annually complete the conflict-of-interest questionnaire, and (ii) immediately update the disclosures as necessary. If a situation arises that might create a conflict of interest, the affected Board Member should disclose the conflict to Board Chairperson. The Board Chairperson should disclose to the Vice-Chairperson any conflict of interest that affects the Board Chairperson.

B. Disclosure by Staff. Exchange staff should report concerns regarding a Board Member's conflict of interest to the Executive Director. The Executive Director and any Board Member who has concerns regarding another Board Member should report their concerns to both the affected Board Member and to the Board Chairperson; if the concerns relate to the Board Chairperson, they should report to the Vice-Chairperson.

C. Informal Resolution. The reported conflict of interest may be resolved by the actions of the affected Board Member or by the affected Board Member and the Board Chairperson working together. The Board Chairperson should make a brief oral report to the Board for inclusion in the minutes stating the nature of the reported conflict and the agreed-upon resolution. Any Board Member may object to the informal resolution and request the matter be referred for formal resolution. Board Members may ask the Exchange's executive staff for information regarding a reported conflict of interest, but the Board will make all decisions regarding a reported conflict of interest.

D. Formal Resolution. If the reported conflict of interest is not resolved by informal resolution, or if a Board Member requests the matter be referred for formal resolution, the Board Chairperson should report the relevant facts to the full Board and recommend a resolution. The resolution should state (i) whether the Board Chairperson believes that a conflict exists, and if so, (ii) a proposed remedy. The Board should then vote either (i) to accept, or modify and accept, the Board Chair's report and resolution or (ii) to refer the matter to a Committee for further review. If referred, the Committee should review the situation and recommend a final resolution to the full Board. The resolution should state (i) whether the Committee believes that a conflict exists, and if so, (ii) a proposed remedy. The affected Board Member may participate when the full Board or the Committee deliberates on whether a conflict exists and the appropriate remedy. The affected Board

Member, however, should not vote on whether the conflict exists or on the remedy. All deliberations and resolutions concerning the reported conflict of interest should be recorded in the minutes.

4. Remedies. When the Board determines that a conflict of interest exists, it should select an appropriate remedy to manage the conflict. Conflicts of interest are not all of equal materiality, and the remedy for each conflict should match the materiality of the conflict; provided, however, that at a minimum the affected Board Member shall abstain from voting on any matter where a conflict of interest exists. For example, when a conflict is immaterial, the affected Board Member could merely be asked to refrain from reviewing certain information or from voting on certain subjects. But when the conflict is material, the Board Member could be barred from receiving certain information or asked to leave the room for certain discussions and votes. In rare cases of a very severe or continuous conflict, the Board Member could be asked to resign.

5. Campaign Contributions. Campaign contributions are governed by Idaho's "Sunshine" laws, and soliciting or receiving campaign contributions or other activities related to political campaigns are excluded from this Conflict of Interest Policy.

APPENDIX A DEFINITIONS

- A. “Affordable Care Act” means the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 STAT. 119 (codified in scattered sections of the Internal Revenue Code and in 42 U.S.C.) and regulations promulgated thereunder.
- B. “Board” means the board consisting of individuals appointed or designated pursuant to the Enabling Act to govern, supervise, control and act for the Exchange.
- C. “Business Affiliate” means, with respect to a Board Member, a Person that controls, is controlled by, or is under common control with the Board Member
- D. "Conflict of Interest" means any action, decision or recommendation by a Board Member respecting a Transaction effected or proposed to be effected by the Exchange if, whether or not the Transaction is brought before the Board for action, the Board Member knows at the Time of Commitment that he or a Member of Household or a Business Associate is a party to the Transaction, or would obtain a private pecuniary benefit or suffer a private pecuniary detriment as a result of the Transaction or has a beneficial Material Financial Interest in or so closely linked to the Transaction and of such financial significance to the Board Member, Member of Household or Business Associate that the interest would reasonably be expected to exert an influence on the Board Member’s judgment if he were called upon to vote on the action. The term “Conflict of Interest” excludes, however, (i) an action as a Board Member which would affect to the same degree a class consisting of an industry or occupation group in which the Board Member, Member of Household or Business Affiliate is a member or is engaged (including, without limitation, any industry or occupation group in which the Board Member’s interest or membership is required by the Enabling Act as a prerequisite to appointment as a Board Member); and (ii) an interest the Board Member has by virtue of his profession, trade or occupation where that interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation.
- E. “Enabling Act” means the Idaho Health Insurance Exchange Act, Idaho Code §§ 41-6101 *et seq.*
- F. “Exchange” means the Idaho Health Insurance Exchange, an independent body corporate and politic created by the Act effective as of March 28, 2013.
- G. “Exchange Participant” means any health insurance provider (“*Insurer*”) who seeks to offer or offers any Qualified Health Plan through the Exchange, (ii) any insurance agent or broker (“*Producer*”) who participates in the activities of the Exchange as a Navigator or otherwise, and (iii) any individual or small employer group who seeks to purchase or purchase health insurance plans through the Exchange, or requests that the Exchange assess or determine eligibility for cost-sharing subsidies or tax credits available under the ACA (“*Insured*”).

- H. “Governmental Entity” means the state of Idaho and all agencies, commissions and other governmental bodies of the state; counties and municipalities of the state of Idaho, and all other political subdivisions including (without limitation) highway districts, planning and zoning commissions or other governmental bodies.
- I. “Material Financial Interest” means any of the following:
1. A financial ownership interest with a fair market value in excess of \$5000;
 2. A financial ownership interest which contributes materially to the income of a Board Member, Member of Household or Business Affiliate;
 3. A position as trustee, director, officer, or employee; or
 4. Any other beneficial financial interest in or so closely linked to the Transaction and of such financial significance to the Board Member , Member of Household or Business Affiliate that the interest would reasonably be expected to exert an influence on the Board Member’s judgment if he were called upon to vote on the Transaction.
- J. “Member of Household” means, with respect to a Board Member, the Board Member’s spouse and dependent children and any other person whom the Board Member is legally obligated to support.
- K. “Person” means any individual, proprietorship, general or limited partnership, joint venture, limited liability company, unincorporated association, trust, estate, business trust, group or corporation, whether operated for profit or not; any other legal entity, or agent or servant thereof; and any Governmental Entity.
- L. “Transaction” shall be interpreted liberally to assure transparency and effectuate the purposes of the Act and applicable federal regulations under the Affordable Care Act and shall include, without limitation:
1. A Vendor contract with the Exchange to provide goods and/or services to or on behalf of the Exchange.
 2. An assessment or determination by the Board as to the eligibility of any Insured for any cost-sharing subsidy or tax credit under the Affordable Care Act.
 3. Any determination or certification of eligibility of any Insurer’s health benefit plan as a Qualified Health Plan to be offered on the Exchange.
 4. Any determination or certification of eligibility of any Producer to participate on the Exchange, as a Navigator or otherwise.
 5. Any other matter in which a Board Member has a Material Financial Interest.

- M. "Required Disclosure" means disclosure by the Board Member who has a known or possible Conflict of Interest of:
1. The existence and nature of the known or possible Conflict of Interest; and, except as provided in subparagraph 2 below , all facts known to him respecting the subject matter of the Transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the Transaction.
 2. If a Board Member has a Conflict of Interest respecting a Transaction, but neither the Board Member nor a Member of Household is a party to the Transaction, and if the Board Member has a duty under law or professional canon, or a duty of confidentiality to another Person, respecting information relating to the Transaction such that the Board Member may not make the disclosure described in subparagraph 1 above, then disclosure is sufficient for purposes of subparagraph 1 above if the Board Member informs the Board of the character and limitations imposed by that duty before the Board's vote on the Transaction, and plays no part, directly or indirectly, in the Board's deliberations or vote. (This exception addresses the conflicting duties of a Board Member that is also a director or officer of a Person, such as an Insurer or Producer, that seeks to enter into a Transaction with the Exchange.)
- N. "Time of Commitment" respecting a Transaction means (a) the time when the Transaction is consummated or, if made pursuant to contract, the time when the Exchange, becomes contractually obligated so that its unilateral withdrawal from the Transaction would entail significant loss, liability, or other damage, or (b) such other time with regard to a Transaction, when a reasonable third party would expect that a potential conflict would be disclosed, even if a contract has not been executed or the Exchange has not become obligated.
- O. "Vendor" means any Person entity that seeks to contract with the Exchange for the provision of goods and/or services in connection with the activities of the Exchange.