

1 AN ACT  
2 RELATING TO THE HEALTH INSURANCE EXCHANGE; AMENDING TITLE 41, IDAHO  
3 CODE, BY THE ADDITION OF A NEW CHAPTER 61, TITLE 41, IDAHO CODE,  
4 TO CREATE A TITLE; TO STATE LEGISLATIVE PURPOSE AND INTENT; TO  
5 DEFINE TERMS; TO ESTABLISH THE EXCHANGE AND BOARD; TO PROVIDE  
6 FOR A PLAN OF OPERATION; TO SET FORTH POWERS AND AUTHORITY OF  
7 THE EXCHANGE; TO PROVIDE FOR REPORTING BY THE EXCHANGE;  
8 PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.  
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10 Be It Enacted by the Legislature of the State of Idaho:

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12 SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended by the  
13 addition thereto of a NEW CHAPTER, to be known and designated as Chapter 61, Title 41,  
14 Idaho Code, and to read as follows:  
15

16 CHAPTER 61  
17 IDAHO HEALTH INSURANCE EXCHANGE ACT  
18

19 41-6101. TITLE. This chapter shall be known and may be cited as the Idaho Health  
20 Insurance Exchange Act.  
21

22 41-6102. PURPOSE AND INTENT. It is the public policy of the state of Idaho to  
23 preserve for its residents individual choice and responsibility in making health coverage  
24 decisions. The purpose and intent of this chapter is to establish a state-operated, market-driven  
25 health insurance exchange that will facilitate the selection and purchase of individual and small  
26 employer health benefit plans and will enable Idaho consumers to take advantage of tax benefits  
27 while preserving state oversight of Idaho's health insurance market. Participation in health  
28 coverage through the exchange is voluntary in that no Idaho citizen or business shall be required  
29 to purchase a health benefit plan through the exchange, and no health carrier shall be required to  
30 offer its products on the exchange.  
31

32 41-6103. DEFINITIONS. For purposes of this chapter:

33 (1) "Board" means those individuals who, acting as a board of directors of the exchange,  
34 govern and act for the exchange, according to section 41-6104, Idaho Code.

35 (2) "Conflict of interest" means that by taking any action or making any decision or  
36 recommendation on the issue, the member of the board, or a person within the member's  
37 household, or any business with which the member, or a person within the member's household  
38 is associated, would receive a private pecuniary benefit or detriment, unless the pecuniary benefit  
39 or detriment would apply to the same degree to a class consisting of all health carriers,  
40 producers, consumers of, or providers of health care in this state.

41 (3) "Director" means the director of the department of insurance of the state of Idaho.

42 (4) "Eligible employee" means an individual employed by an eligible employer who is  
43 offered coverage by an eligible employer under one or more health benefit plans offered through  
44 the exchange.

1 (5) "Eligible employer" means a small employer that elects to make its full-time  
2 employees eligible for one or more health benefit plans offered through the exchange, provided  
3 that the small employer:

4 (a) Has its principal place of business in this state and elects to provide coverage through  
5 the exchange to all of its eligible employees, wherever employed; or

6 (b) Elects to provide coverage through the exchange to its eligible employees who are  
7 principally employed in this state.

8 (6) "Eligible individual" means an individual, including a minor, who:

9 (a) Is seeking to enroll in a health benefit plan offered to individuals through the  
10 exchange;

11 (b) Resides in this state;

12 (c) At the time of enrollment, is not incarcerated, other than incarceration pending the  
13 disposition of charges; and

14 (d) Is, and is reasonably expected to be, for the entire period for which enrollment is  
15 sought, a citizen or national of the United States of America or an alien lawfully present  
16 in the United States of America.

17 (7) "Exchange" means the Idaho health insurance exchange established pursuant to this  
18 chapter to facilitate the purchase of health benefit plans by individuals and small employers.

19 (8) "Health carrier" means an entity with a certificate of authority subject to title 41,  
20 Idaho Code, and subject to the jurisdiction of the director of the Idaho department of insurance,  
21 that contracts or offers to contract to provide, deliver, or arrange for a health benefit plan or a  
22 stand-alone dental plan, including a disability insurance company, a managed care organization  
23 and a nonprofit hospital and professional health service corporation.

24 (9) "Health benefit plan" means a policy, contract, certificate or agreement offered or  
25 issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of  
26 health care services.

27 (a) "Health benefit plan" does not include:

28 i. Coverage only for accident, or disability income insurance, or any  
29 combination thereof;

30 ii. Coverage issued as a supplement to liability insurance;

31 iii. Liability insurance, including general liability insurance and automobile  
32 liability insurance;

33 iv. Workers' compensation or similar insurance;

34 v. Automobile medical payment insurance;

35 vi. Credit-only insurance;

36 vii. Coverage for on-site medical clinics; or

37 viii. Other similar insurance coverage, specified in federal regulations issued  
38 pursuant to Pub. L. No. 104-191 (Health Insurance Portability and  
39 Accountability Act of 1996), under which benefits for health care services  
40 are secondary or incidental to other insurance benefits.

41 (b) "Health benefit plan" does not include the following benefits if they are provided  
42 under a separate policy, certificate or contract of insurance or are otherwise not an  
43 integral part of the plan;

- 1 i. Limited scope dental or vision benefits;
- 2 ii. Benefits for long-term care, nursing home care, home health care,
- 3 community-based care, or any combination thereof; or
- 4 iii. Other similar, limited benefits specified in federal regulations issued
- 5 pursuant to Pub. L. No. 104-191.

6 (c) "Health benefit plan" does not include the following benefits if the benefits are  
7 provided under a separate policy, certificate, or contract of insurance, there is no  
8 coordination between the provision of the benefits and any exclusion of benefits  
9 under any group health plan maintained by the same plan sponsor, and the benefits  
10 are paid with respect to an event without regard to whether benefits are provided with  
11 respect to such an event under any group health plan maintained by the same plan  
12 sponsor:

- 13 i. Coverage only for a specified disease or illness; or
- 14 ii. Hospital indemnity or other fixed indemnity insurance.

15 (d) "Health benefit plan" does not include the following if offered as a separate policy,  
16 certificate or contract of insurance:

- 17 i. Medicare supplemental health insurance as defined under section
- 18 1882(g)(1) of the Social Security Act;
- 19 ii. Coverage supplemental to the coverage provided under chapter 55 of title
- 20 10, United State Code (Civilian Health and Medical Program of the
- 21 Uniformed Services (CHAMPUS)); or
- 22 iii. Similar supplemental coverage provided to coverage under a group
- 23 health plan.

24 (10) "Person" means an individual or a business or other legal entity or any combination  
25 thereof.

26 (11) "Producer" means a person required to be licensed under chapter 10, title 41, Idaho  
27 Code, to sell, solicit or negotiate disability insurance.

28 (12) "Small employer" means a person who employed an average of at least one (1) but  
29 not more than fifty (50) employees on business days during the preceding calendar year and who  
30 employs at least one (1) employee on the first day of the plan year.

31 (13) "Stand-alone dental plan" means a limited scope dental plan by a health carrier that  
32 is licensed to offer dental coverage, but need not be licensed to offer other health benefits, which  
33 plan shall be limited to dental and oral health benefits, without substantially duplicating the  
34 benefits typically offered by health benefit plans without dental coverage, but which provides, at  
35 a minimum, pediatric dental and oral health benefits.

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37 41-6104. ESTABLISHMENT OF THE EXCHANGE AND BOARD. (1) There is  
38 hereby created an independent public body corporate and politic to be known as the Idaho health  
39 insurance exchange, which shall be available to eligible individuals, eligible employers and other  
40 small employers. The exchange will perform an essential governmental function in the exercise  
41 of powers conferred upon it in this chapter.

42 (2) The exchange created by this chapter shall operate subject to the supervision and  
43 control of its board. The board shall consist of fifteen (15) total members, with thirteen (13)

1 voting members. Subject to the provisions of this section, members of the board shall  
2 collectively offer expertise, knowledge and experience in health benefits administration, health  
3 care finance, health plan purchasing, health care delivery system administration, public health,  
4 and health policy issues related to small employer and individual markets and the uninsured. A  
5 majority of the board shall not collectively represent health carriers or producers. Eleven (11)  
6 members shall be appointed to the board by, and serve at the pleasure of, the governor. The  
7 members appointed to the board by the governor shall be subject to confirmation by the senate. If  
8 any appointment is made during the recess of the legislature it shall be subject to confirmation by  
9 the senate during its next ensuing session. In selecting the eleven (11) members of the board, the  
10 governor shall appoint: three (3) members representing different health carriers; two (2)  
11 members representing producers; one (1) member representing hospitals licensed by the state;  
12 one (1) member representing physicians licensed by the Idaho board of medicine; one (1)  
13 member representing individual consumer interests; one (1) member representing small  
14 employer business interests employing between one and ten employees; one (1) member  
15 representing small employer business interests employing between eleven and twenty-five  
16 employees; and one (1) member representing small employer business interests employing  
17 twenty-six or more employees. One (1) member shall be a member of the senate appointed by  
18 the president pro tempore of the senate, and one (1) member shall be a member of the house of  
19 representatives appointed by the speaker of the house. The director or his designated  
20 representative and the director of the state department of health and welfare or his designated  
21 representative shall each serve as ex officio non-voting members of the board.

22 (3) The eleven (11) board members appointed by the governor shall serve a term of four  
23 (4) years. A board member may be appointed by the governor to serve subsequent terms.  
24 Legislative members of the board shall serve for a term of two (2) years. A vacancy in a  
25 member's position on the board shall be filled in the same manner as the original appointment.

26 (4) The board shall elect a chairman and vice chairman from among the voting members.  
27 The board shall meet at the times and places as determined appropriate by the chair and vice  
28 chair in the absence or inability of the chair to serve. Notice to board members of the meetings  
29 shall be given according to procedures established by the board. A majority of the voting  
30 members of the board shall constitute a quorum for the transaction of business.

31 (5) The exchange is a public agency for the purposes of the open meeting law, chapter 23,  
32 title 67, Idaho Code; a state agency for the purposes of the public records law, chapter 3, title 9,  
33 Idaho Code; an agency for the purposes of the Idaho administrative procedure act, chapter 52,  
34 title 67, Idaho Code; and a governmental entity for the purposes of the Idaho tort claims act,  
35 chapter 9, title 6, Idaho Code.

36 (6) Any board member or employee who acts on behalf of the exchange shall act as a  
37 fiduciary. Such person shall ensure that the exchange is operated:

38 (a) Solely in the interests of eligible individuals and eligible employers and their eligible  
39 employees participating in health benefit plans offered through the exchange; and

40 (b) For the purpose of facilitating the purchase of health benefit plans and determining  
41 eligibility for obtaining health coverage through public programs.

42 (7) Whenever a member of the board has a conflict of interest on an issue that is before  
43 the board, the member shall disclose it and shall also comply with any additional requirements  
44 established pursuant to the plan of operation.

45 (8) Neither members of the board nor employees of the exchange, if any, shall be:

1 (a) considered employees of the state of Idaho by virtue of their service on the  
2 board or employment by the exchange;

3 (b) eligible for or entitled to benefits from the public employee retirement system  
4 of Idaho;

5 (c) subject to or entitled to benefits from the provisions applicable to classified  
6 employees, chapter 53, title 67, Idaho Code,

7 (d) subject to or entitled to benefits from the provisions applicable to non-  
8 classified employees of chapter 16, title 59, Idaho Code.

9 Nothing in this chapter shall prevent a member of the board who is otherwise a current or former  
10 state employee from receiving his usual state compensation and benefits while serving on the  
11 board. Members of the board who are not otherwise state employees shall be entitled to receive a  
12 compensation for service like that prescribed in section 59-509(n), Idaho Code.

13 (9) The board and the exchange shall not be subject to the purchasing statutes and rules of  
14 the state of Idaho.

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16 41-6105. EXCHANGE PLAN OF OPERATION. (1) The board shall consult with  
17 interested parties, stakeholders and other persons as it deems necessary and appropriate to  
18 develop and, upon no less than twenty-one (21) days' notice to be provided pursuant to section  
19 67-2343, Idaho Code, and in an open meeting, adopt no later than December 1, 2012, a plan of  
20 operation for the exchange that will establish requirements or guidelines for participation in the  
21 exchange and procedures for the fair, equitable and efficient administration and operation of the  
22 exchange consistent with the requirements, purpose and intent of this chapter. The exchange plan  
23 of operation may be amended at any time by the board consistent with the requirements, purpose  
24 and intent of this chapter.

25 (2) The exchange plan of operation shall: *and stand-alone dental plans*  
26 (a) Set forth rules of operation and requirements for participation in the exchange that  
27 will include health benefit plans to be made available to eligible individuals and eligible  
28 employers to assist Idaho residents and small employers in selecting and enrolling in  
29 health benefit plans.

30 (b) Establish procedures and functions for the exchange as deemed necessary and  
31 appropriate by the board to prevent the establishment of a health insurance exchange  
32 created or operated by or on behalf of the federal government of the United States of  
33 America in Idaho.

34 (c) Provide mechanisms for assisting eligible individuals and eligible employers in  
35 comparing, selecting and enrolling in health benefit plans and stand-alone dental plans  
36 offered through the exchange, including but not limited to: use of a telephone hotline,  
37 internet portal and other resources; establishment of guidelines and procedures allowing  
38 producers to assist eligible individuals and eligible employers in purchasing health  
39 benefit plans through the exchange; standardized formats for listing and explaining plan  
40 benefits; systems for rating, categorizing and comparing health benefit plans to facilitate  
41 plan comparisons; and providing information to eligible individuals and eligible  
42 employers of the availability of tax benefits and public or private programs that may  
43 make health coverage more affordable.

44 (d) Provide for the selection of persons qualified to serve as navigators to assist  
45 individuals and employers with eligibility, enrollment, program specifications and public  
46 education activities related to the exchange. All individuals employed by or affiliated

1 with a navigator who are facilitating enrollment in qualified health plans must be  
2 producers licensed and regulated by the director.

3 (e) Identify sources of revenue to fund the operating costs of the exchange to make it self-  
4 sustaining, which may include fees from licensed insurers or health carriers, exchange  
5 users and participants as determined to be necessary and appropriate by the board.

6 (f) Establish the fiscal year for the exchange and provide for maintaining an accurate  
7 accounting of all activities, receipts and expenditures of the exchange, which will be  
8 reported to the governor and the legislature in accordance with this chapter, and to others  
9 as deemed appropriate by the board.

10 (g) Establish procedures for purchasing and contracting for necessary goods and services  
11 that are fiscally responsible.

12 (h) If deemed appropriate by the board, establish risk adjustment or reinsurance  
13 mechanisms to equitably distribute costs associated with high risk eligible individuals or  
14 eligible employees that obtain coverage through the exchange.

15 (i) Provide for any other matter deemed necessary and appropriate by the board not  
16 inconsistent with this chapter.

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18 41-6106. POWERS AND AUTHORITY. (1) Unless otherwise required by this chapter,  
19 in the discretion of the board, the exchange shall have the following powers and authority to:

20 (a) Develop and propose a plan of operation and implement the exchange plan of  
21 operation. If it is necessary or appropriate that a particular restriction or requirement of  
22 general applicability be set forth by rulemaking, then, for that particular restriction or  
23 requirement, the exchange is authorized to promulgate rules in addition to or in lieu of the  
24 process for adopting the plan of operation.

25 (b) Enter into contracts with private and public parties that are necessary or appropriate to  
26 implement the plan of operation and fulfill the requirements, purpose and intent of this  
27 chapter.

28 (c) Appoint a manager, whose duties, subject to the direction and supervision of the  
29 board, shall be to conduct and oversee the operations and administration of the exchange.  
30 If appointed, the manager shall serve at the pleasure of the board. The manager shall have  
31 such powers as are necessary to carry out the duties of the exchange, subject to policy  
32 direction of the board and within financial limits established by the board, including the  
33 employment, supervision, and termination of such other employees as may be deemed  
34 necessary.

35 (d) Receive and share information that is confidential and exempt from public disclosure  
36 from and with persons and governmental agencies. This includes the authority to share  
37 information as may be necessary to effect tax credits or cost sharing reductions to the  
38 benefit of Idaho eligible individuals or eligible employers and to prevent the  
39 establishment or operation of an exchange by or on behalf of the federal government of  
40 the United States of America. Prior to sharing confidential information, the exchange  
41 shall ensure that the recipient understands the confidential nature of the information and  
42 agrees to maintain that confidentiality. The exchange shall provide for appropriate levels  
43 of security to protect information. *and stand-alone dental plans*

44 (e) Make health benefit plans offered by health carriers lawfully operating in the state of  
45 Idaho available to eligible individuals and eligible employers in accordance with the  
46 exchange plan of operation. The board shall consider the feasibility of providing a

1 defined contribution health benefit plan option to eligible employers. The director shall  
2 provide a written recommendation to the exchange whether a health benefit plan meets  
3 the criteria established by the exchange plan of operation to be offered through the  
4 exchange.

5 (f) Appoint appropriate legal, actuarial, technical and other committees as necessary and  
6 appropriate to provide assistance in the development of the plan of operation of the  
7 exchange and any function within the authority of the exchange.

8 (g) Assess and collect fees from health carriers, insurers, exchange users and participants  
9 and receive funds from other sources of revenue such as grant funds, including public  
10 entities, according to the exchange plan of operation or rulemaking. The exchange fees  
11 and any grant funds imposed or collected pursuant to the operation of the exchange shall  
12 at all times be free from taxation of every kind. On an interim basis prior to the  
13 establishment of the exchange plan of operation, the exchange may receive and utilize  
14 grant funds.

15 (h) Sue or be sued, including taking any legal actions necessary or proper to recover any  
16 amounts lawfully owed the exchange.

17 (i) Obtain a line of credit as may be reasonable and necessary to fulfill the requirements  
18 of this chapter. Neither any member of the board nor any employee of the exchange shall  
19 be liable for any obligations of the exchange.

20 (j) The exchange may recommend to the director, and the director may adopt, rules  
21 implementing measures to prevent adverse selection against health benefit plans offered  
22 through the exchange.

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

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

31 (b) The exchange shall not be used to implement or enforce any requirement for the  
32 mandatory purchase of health insurance.

33 (c) The exchange shall not be used to implement or enforce any penalty arising from an  
34 individual's or employer's decision not to purchase health insurance.

35 (d) Nothing in this chapter shall be construed or interpreted to permit the abrogation,  
36 preemption, or duplication of the authority of the director pursuant to title 41, Idaho  
37 Code, and rules adopted in accordance therewith, except to the extent such action by the  
38 exchange is specifically authorized pursuant to this chapter.

39 (e) The exchange shall not permit a health carrier to offer any health benefit plan through  
40 the exchange that does not comply with the applicable laws of this state.

41 (f) The exchange shall not prohibit a health carrier from participating or a health benefit  
42 plan from being sold in the exchange if the health carrier or health benefit plan meets all  
43 requirements of applicable Idaho law and the exchange plan of operation.

44 (g) The exchange shall not attempt to prohibit or preclude a health carrier from offering  
45 health insurance coverage outside the exchange; however, the exchange, after review by  
46 and consultation with the director, may impose requirements on health benefit plans

1 offered through the exchange to prevent adverse selection where the health benefit plan  
2 offered through the exchange is identical or substantially similar to a health plan offered  
3 by the same health carrier outside the exchange.

4 (h) Nothing in this chapter or the plan of operation shall prohibit or preclude a health  
5 carrier from offering health insurance coverage outside of the exchange to any individual  
6 or small employer, including eligible individuals and eligible employers, nor shall this  
7 chapter or the plan of operation be interpreted to prohibit or preclude any individual,  
8 including any eligible individual, from enrolling in, or any small employer, including any  
9 eligible employer, from selecting for its employees, including its eligible employees,  
10 health benefit plan or other insurance coverage offered outside of the exchange.  
11

12 41-6107. REPORT. The exchange shall submit a full report of its activities and the  
13 condition of the individual and small employer exchange market to be submitted to the governor,  
14 the director of legislative services for distribution to the president pro tempore of the senate, the  
15 speaker of the house of representatives, the chairs of the legislative health care task force and  
16 germane committees of both chambers on or before July 1, 2017, and annually on or before each  
17 July 1 thereafter.  
18

19 41-6108. SEVERABILITY. The provisions of this act are hereby declared to be  
20 severable and, if any provision of this act or the application of such provision to any person or  
21 circumstance is declared invalid for any reason, such declaration shall not affect the validity of  
22 the remaining portions of this act.  
23

24 41-6109. EFFECTIVE DATE. An emergency existing therefor, which emergency is  
25 hereby declared to exist, this act shall be in full force and effect on and after its passage and  
26 approval.  
27