AN ACT

RELATING TO THE HEALTH INSURANCE EXCHANGE; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 61, TITLE 41, IDAHO CODE, TO CREATE A TITLE; TO STATE LEGISLATIVE PURPOSE AND INTENT; TO DEFINE TERMS; TO ESTABLISH THE EXCHANGE AND BOARD; TO PROVIDE FOR A PLAN OF OPERATION; TO SET FORTH POWERS AND AUTHORITY; TO REQUIRE NAVIGATOR REGISTRATION; TO PROVIDE FOR REPORTING; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

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

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

CHAPTER 61
IDAHO HEALTH INSURANCE EXCHANGE ACT

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

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

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

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

(2) "Conflict of interest" means that by taking any action or making any decision or recommendation on a matter within the authority of the board, a member of the board, or a person within the member's household, or any business with which the member, or a person within the member's household is associated, would receive a private pecuniary benefit or detriment, unless the pecuniary benefit or detriment would apply to the same degree to a class consisting of all persons within the particular class in this state.

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

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

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

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

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

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

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

(b) Resides in this state;

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

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

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

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

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

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

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

ii. Coverage issued as a supplement to liability insurance;

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

iv. Workers' compensation or similar insurance;

v. Automobile medical payment insurance;

vi. Credit-only insurance;

vii. Coverage for on-site medical clinics; or

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

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

i. Limited scope dental or vision benefits;

ii. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

iii. Other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

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

i. Coverage only for a specified disease or illness; or

ii. Hospital indemnity or other fixed indemnity insurance.

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

i. Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

ii. Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)); or

iii. Similar supplemental coverage provided to coverage under a group health plan.

(10) "Navigator" means a person who assists with eligibility, enrollment, program specifications and public education activities related to the exchange.

(11) "Person" means an individual or a business or other private or public legal entity.

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

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

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

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

(2) The exchange created by this chapter shall operate subject to the supervision and control of its board. The board shall consist of thirteen (13) total members, with eleven (11) voting members. Subject to the provisions of this section, members of the board shall

collectively offer expertise, knowledge and experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, and health policy issues related to small employer and individual markets and the uninsured. A majority of the board shall not collectively represent health carriers or producers. Nine (9) members shall be appointed to the board by, and serve at the pleasure of, the governor. The members appointed to the board by the governor shall be subject to confirmation by the senate. If any appointment is made during the recess of the legislature it shall be subject to confirmation by the senate during its next ensuing session. In selecting the nine (9) members of the board, the governor shall appoint: three (3) members representing different health carriers; two (2) members representing producers; one (1) member representing individual consumer interests; one (1) member representing small employer business interests employing between one and ten employees; one (1) member representing small employer business interests employing between eleven and twenty-five employees; and one (1) member representing small employer business interests employing twenty-six or more employees. One (1) member shall be a member of the senate appointed by the president pro tempore of the senate, and one (1) member shall be a member of the house of representatives appointed by the speaker of the house. The director or his designated representative and the director of the state department of health and welfare or his designated representative shall each serve as ex officio non-voting members of the board.

(3) The nine (9) board members appointed by the governor shall each serve a term of four (4) years or until his successor is appointed. A board member may be appointed by the governor to serve subsequent terms. Legislative members of the board shall serve for a term of two (2) years. A vacancy in a member's position on the board shall be filled in the same manner as the original appointment.

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

(5) The exchange is deemed:

(a) A public agency for the purposes of the open meeting law, chapter 23, title 67, Idaho Code;

(b) A state agency for the purposes of the public records law, chapter 3, title 9, Idaho Code; and

(c) A governmental entity for the purposes of the Idaho tort claims act, chapter 9, title 6, Idaho Code.

(6) Any board member or employee who acts on behalf of the exchange shall act as a fiduciary. Such person shall ensure that the exchange is operated in the interests of eligible individuals and eligible employers and their eligible employees participating in health benefit plans offered through the exchange and for the purpose of facilitating the determination of eligibility for and enrollment in health benefit plans and other health coverage as may be provided by other applicable law.

(7) Whenever a member of the board has a conflict of interest on a matter that is before the board, the member shall disclose it, abstain from any vote on the matter and shall also comply with any additional requirements established pursuant to the plan of operation.

(8) Neither members of the board nor contractors working for or on behalf of the exchange shall be:

(a) Considered employees of the state of Idaho by virtue of their service on the board or performance of contract services for the exchange except for purposes of the Idaho tort claims act, chapter 9, title 6, Idaho Code;

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

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

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

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

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

(10) In addition to the power set forth in section 41-6106, Idaho Code, to designate advisory committees in its discretion, the board shall appoint an advisory committee consisting of medical providers to aid the board in its duties. The board shall designate at least one of its members to serve as a liaison to the provider advisory committee. The members of the provider advisory committee shall include at least one member duly licensed as, employed by or representing the following types of health care providers:

(a) Community health centers;

(b) Dentists;

(c) Hospitals;

(d) Pharmacists;

(e) Physicians; and

(f) Any other category of health care provider the board believes would be helpful to include on the committee.

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

(2) The exchange plan of operation shall:

(a) Set forth policies and procedures for operation of and any requirements for participation in the exchange that will include health benefit plans and stand-alone dental plans to be made available to eligible individuals and eligible employers to assist Idaho residents and small employers in selecting and enrolling in health benefit plans.

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

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

(d) Provide for the selection of persons qualified to serve as navigators to assist individuals and employers with eligibility, enrollment, program specifications and public education activities related to the exchange.

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

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

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

(h) In cooperation with the director, establish risk spreading and risk adjustment programs within the exchange.

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

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

(a) Develop and implement the exchange plan of operation.

(b) Enter into contracts with persons who are necessary or appropriate to develop and implement the plan of operation and fulfill the requirements, purpose and intent of this chapter.

(c) Contract with a manager, whose duties, subject to the direction and supervision of the board, shall be to conduct and oversee the operations and administration of the exchange. The manager shall serve at the pleasure of the board. The manager shall have such powers as are necessary to carry out the duties of the exchange, subject to policy direction of the board and within financial limits established by the board, including the employment and supervision of other contract employees as may be deemed necessary.

(d) The board shall have the authority to enter into contracts and memoranda of understanding with the Idaho Department of Insurance and the Idaho Department of Health and Welfare for necessary staff or services in order to provide for services

including, but not limited to, technical expertise, technology, collection of assessments, enforcement of applicable provisions, handling consumer complaints, supervision of navigators and other similar functions related to the responsibilities of the departments. The board shall have the authority to enter into contracts and memoranda of understanding with the Office of Attorney General in order to obtain legal services.

(e) Receive and share information including, but not limited to, information that is confidential and exempt from public disclosure from and with persons. This includes the authority to share information as may be necessary to effect tax credits or cost sharing reductions to the benefit of Idaho eligible individuals or eligible employers and to prevent the establishment or operation of an exchange solely by or on behalf of the federal government of the United States of America. Prior to sharing confidential information, the exchange shall ensure that the recipient understands the confidential nature of the information and agrees to maintain the confidentiality of the information. The exchange shall provide for appropriate levels of security to protect information.

(f) Make health benefit plans and stand-alone dental plans offered by health carriers lawfully operating in the state of Idaho available to eligible individuals and eligible employers in accordance with the exchange plan of operation. The board shall consider the feasibility of providing, with a goal of establishing, a defined contribution health benefit plan option to eligible employers.

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

(h) Assess and collect fees from health carriers, exchange users and participants and receive funds from other sources of revenue including grant funds according to rulemaking as authorized by this chapter. The exchange fees and any grant funds imposed or collected pursuant to the operation of the exchange shall at all times be free from taxation of every kind and shall be used solely for the purposes of this chapter. On an interim basis prior to the establishment of the exchange plan of operation, the exchange may receive and utilize grant funds.

(i) Take any legal action necessary or appropriate to recover any amounts lawfully owed the exchange or otherwise consistent with this chapter.

(j) Obtain a line of credit from a licensed financial institution as may be reasonable and necessary to fulfill the requirements of this chapter. Neither any member of the board, nor any employee of the exchange if any, shall be liable for any obligations of the exchange.

(k) The exchange may collaborate with, and the director may promulgate, rules implementing risk spreading and risk adjustment measures.

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

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

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

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

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

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

(e) The exchange shall not attempt to prohibit or preclude a health carrier from offering health insurance coverage outside the exchange; however, the director, after review by and consultation with the exchange, may impose requirements on health carriers offering health benefit plans offered inside or outside the exchange to prevent adverse selection.

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

(3) Nothing in this chapter shall be construed or interpreted to permit the abrogation or preemption of the authority of the director pursuant to title 41, Idaho Code, and rules adopted in accordance therewith, except to the extent such action by the exchange may specifically be authorized pursuant to this chapter. The director is authorized to promulgate rules as necessary or appropriate to carry out the purpose and intent of this chapter and the plan of operation adopted in accordance therewith. The director and the director of the state department of health and welfare are authorized to assist the board in carrying out the responsibilities and duties of this chapter consistent with their respective statutory duties and authority. This includes, but is not limited to, the director's authority to review health benefit plans and health carrier rates to be sold inside the exchange for conformance to the provisions of the plan of operation, rules or other applicable law consistent with the intent and provisions of this chapter.

41-6107. NAVIGATORS. (1) A person shall not act as a navigator in this state unless the person is registered with the director as a navigator. Application shall be made on forms prescribed by the director, and the applicant shall pay a fee to the director set forth by rule. Prior to registering an applicant as a navigator, the director shall determine based on the application that the person has the qualifications and ability to serve as a navigator. An individual employed by or affiliated with a registered navigator need not hold a separate individual navigator registration, however, the applicant for and navigator seeking renewal of registration may be required to demonstrate that the individuals acting for it have met training or other education standards or classes acceptable to the director. The director may prescribe by rule any necessary continuing education or training requirements for navigators.

(2) A navigator registration shall be valid for two years and be subject to renewal upon application to the director on forms prescribed by the director and payment of a fee as set forth by rule.

(3) The provisions of chapters 1, 2, and 13, of title 41, and sections 41-1008, 41-1016, 41-1021, Idaho Code, and any related rules, shall apply to navigators. For purposes of this

chapter and the application of other provisions of title 41, Idaho Code, the duties of a navigator shall be deemed to constitute transacting the business of insurance.

(4) All persons acting as, employed by, or affiliated with a navigator who are facilitating enrollment in qualified health plans, which activities include conduct amounting to selling, soliciting or negotiating insurance shall be licensed producers as required by and subject to chapter 10, title 41, Idaho Code, and any related rules.

41-6108. REPORT. The exchange shall submit a full report of its activities and the condition of the individual and small employer exchange market to the governor, the director of legislative services for distribution to the legislative council, and the chairs of the legislative health care task force and germane committees of both chambers on or before July 1, 2017, and annually on or before each July 1 thereafter.

41-6109. SEVERABILITY. The provisions of this act are hereby declared to be severable and, if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

41-6110. EFFECTIVE DATE. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.