

1                                   **AMENDMENTS TO HEALTH INSURANCE**  
2                                   **COVERAGE IN STATE CONTRACTS**

3                                   2010 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: James A. Dunnigan**

6                                   Senate Sponsor: Gene Davis

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill amends provisions related to the requirement that contractors with certain  
11 state entities must provide qualified health insurance to their employees and the  
12 dependents of the employees who work or reside in the state.

13                   **Highlighted Provisions:**

14                   This bill:

- 15                   ▶ clarifies that the application of a waiting period for health insurance may not  
16 exceed the first of the month following 90 days of the date of hire;
- 17                   ▶ clarifies that the qualified health insurance coverage must be offered to employees  
18 and dependents who work or reside in the state;
- 19                   ▶ clarifies that the qualified health insurance coverage that must be offered is a  
20 minimum standard and an employer may offer greater coverage;
- 21                   ▶ amends the definition of qualified health insurance coverage to clarify the  
22 standards;
- 23                   ▶ amends the enforcement provisions to provide protections for good faith  
24 compliance; and
- 25                   ▶ clarifies how an employer offering a defined contribution arrangement may comply  
26 with state contract requirements.

27                   **Monies Appropriated in this Bill:**

28                   None

29                   **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **17B-2a-818.5**, as enacted by Laws of Utah 2009, Chapter 13

34 **19-1-206**, as enacted by Laws of Utah 2009, Chapter 13

35 **63A-5-205**, as last amended by Laws of Utah 2009, Chapter 13

36 **63C-9-403**, as enacted by Laws of Utah 2009, Chapter 13

37 **72-6-107.5**, as enacted by Laws of Utah 2009, Chapter 13

38 **79-2-404**, as enacted by Laws of Utah 2009, Chapter 13

39 ENACTS:

40 **31A-30-209**, Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **17B-2a-818.5** is amended to read:

44 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**  
45 **coverage.**

46 (1) For purposes of this section:

47 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
48 34A-2-104 who:

49 (i) works at least 30 hours per calendar week; and

50 (ii) meets employer eligibility waiting requirements for health care insurance which  
51 may not exceed the first day of the calendar month following 90 days from the date of hire.

52 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

53 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time  
54 the contract is entered into or renewed:

55 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~  
56 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

57 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~

58 ~~the dependents of the employee;]~~

59 ~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~

60 ~~[(I) the lowest deductible permitted for a federally qualified high deductible health~~  
61 ~~plan; and]~~

62 ~~[(H) an out-of-pocket maximum that does not exceed three times the amount of the~~  
63 ~~annual deductible; and]~~

64 ~~[(B) under which the employer pays 75% of the premium for the employee and the~~  
65 ~~dependents of the employee; or]~~

66 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~  
67 ~~determined under Subsection (1)(c)(i); and]~~

68 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~  
69 ~~the dependents of the employee.]~~

70 (i) a health benefit plan and employer contribution level with a combined actuarial  
71 value at least actuarially equivalent to the combined actuarial value of the benchmark plan  
72 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),  
73 and a contribution level of 50% of the premium for the employee and the dependents of the  
74 employee who reside or work in the state, in which:

75 (A) the employer pays at least 50% of the premium for the employee and the  
76 dependents of the employee who reside or work in the state; and

77 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

78 (I) rather than the benchmark plan's deductible, and the benchmark plan's  
79 out-of-pocket maximum based on income levels:

80 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

81 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

82 (II) dental coverage is not required; and

83 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do  
84 not apply; or

85 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a

86 deductible that is either:

87 (I) the lowest deductible permitted for a federally qualified high deductible health  
88 plan; or

89 (II) a deductible that is higher than the lowest deductible permitted for a federally  
90 qualified high deductible health plan, but includes an employer contribution to a health  
91 savings account in a dollar amount at least equal to the dollar amount difference between the  
92 lowest deductible permitted for a federally qualified high deductible plan and the deductible  
93 for the employer offered federally qualified high deductible plan;

94 (B) an out-of-pocket maximum that does not exceed three times the amount of the  
95 annual deductible; and

96 (C) under which the employer pays 75% of the premium for the employee and the  
97 dependents of the employee who work or reside in the state.

98 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

99 (2) (a) Except as provided in Subsection (3), this section applies to ~~[all contracts]~~ a  
100 design or construction contract entered into by the public transit district on or after July 1,  
101 2009, ~~[if:]~~ and to a prime contractor or to a subcontractor in accordance with Subsection  
102 (2)(b).

103 ~~[(a) the contract is for design or construction; and]~~

104 (b) (i) A prime contractor is subject to this section if the prime contract is in the  
105 amount of \$1,500,000 or greater~~[-or]~~.

106 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
107 \$750,000 or greater.

108 (3) This section does not apply if:

109 (a) the application of this section jeopardizes the receipt of federal funds;

110 (b) the contract is a sole source contract; or

111 (c) the contract is an emergency procurement.

112 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,  
113 or a modification to a contract, when the contract does not meet the initial threshold required

114 by Subsection (2).

115 (b) A person who intentionally uses change orders or contract modifications to  
116 circumvent the requirements of Subsection (2) is guilty of an infraction.

117 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit  
118 district that the contractor has and will maintain an offer of qualified health insurance  
119 coverage for the contractor's employees and the employee's dependents during the duration of  
120 the contract.

121 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor  
122 shall demonstrate to the public transit district that the subcontractor has and will maintain an  
123 offer of qualified health insurance coverage for the subcontractor's employees and the  
124 employee's dependents during the duration of the contract.

125 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during  
126 the duration of the contract is subject to penalties in accordance with ~~[administrative rules]~~ an  
127 ordinance adopted by the public transit district under Subsection (6).

128 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet  
129 the requirements of Subsection (5)(b).

130 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during  
131 the duration of the contract is subject to penalties in accordance with ~~[administrative rules]~~ an  
132 ordinance adopted by the public transit district under Subsection (6).

133 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet  
134 the requirements of Subsection (5)(a).

135 (6) The public transit district shall adopt ~~[administrative rules]~~ ordinances:  
136 ~~[(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;]~~  
137 ~~[(b)]~~ (a) in coordination with:

138 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

139 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

140 (iii) the State Building Board in accordance with Section 63A-5-205;

141 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

142 (v) the Department of Transportation in accordance with Section 72-6-107.5; and  
143 [~~(vi) the Legislature's Administrative Rules Review Committee; and~~]  
144 [~~(c)~~] (b) which establish:

145 (i) the requirements and procedures a contractor must follow to demonstrate to the  
146 public transit district compliance with this section which shall include:

147 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)  
148 or (b) more than twice in any 12-month period; and

149 (B) that the actuarially equivalent determination required in Subsection (1) is met by  
150 the contractor if the contractor provides the department or division with a written statement of  
151 actuarial equivalency from either:

152 (I) the Utah Insurance Department; [~~or~~]

153 (II) an actuary selected by the contractor or the contractor's insurer; [~~and~~] or

154 (III) an underwriter who is responsible for developing the employer group's premium  
155 rates;

156 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
157 violates the provisions of this section, which may include:

158 (A) a three-month suspension of the contractor or subcontractor from entering into  
159 future contracts with the public transit district upon the first violation;

160 (B) a six-month suspension of the contractor or subcontractor from entering into  
161 future contracts with the public transit district upon the second violation;

162 (C) an action for debarment of the contractor or subcontractor in accordance with  
163 Section 63G-6-804 upon the third or subsequent violation; and

164 (D) monetary penalties which may not exceed 50% of the amount necessary to  
165 purchase qualified health insurance coverage for employees and dependents of employees of  
166 the contractor or subcontractor who were not offered qualified health insurance coverage  
167 during the duration of the contract[;]; and

168 (iii) a website on which the district shall post the benchmark for the qualified health  
169 insurance coverage identified in Subsection (1)(c)(i).

170 (7) (a) (i) In addition to the penalties imposed under Subsection (6)~~(c)~~(b)(ii), a  
171 contractor or subcontractor who intentionally violates the provisions of this section shall be  
172 liable to the employee for health care costs [~~not covered by insurance.~~] that would have been  
173 covered by qualified health insurance coverage.

174 (ii) An employer has an affirmative defense to a cause of action under Subsection  
175 (7)(a)(i) if:

176 (A) the employer relied in good faith on a written statement of actuarial equivalency  
177 provided by an:

178 (I) actuary; or

179 (II) underwriter who is responsible for developing the employer group's premium rates;

180 or

181 (B) a department or division determines that compliance with this section is not  
182 required under the provisions of Subsection (3) or (4).

183 (b) An employee has a private right of action only against the employee's employer to  
184 enforce the provisions of this Subsection (7).

185 (8) Any penalties imposed and collected under this section shall be deposited into the  
186 Medicaid Restricted Account created in Section 26-18-402.

187 (9) The failure of a contractor or subcontractor to provide qualified health insurance  
188 coverage as required by this section:

189 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
190 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
191 Legal and Contractual Remedies; and

192 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
193 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
194 or construction.

195 Section 2. Section **19-1-206** is amended to read:

196 **19-1-206. Contracting powers of department -- Health insurance coverage.**

197 (1) For purposes of this section:

198 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
199 34A-2-104 who:

200 (i) works at least 30 hours per calendar week; and

201 (ii) meets employer eligibility waiting requirements for health care insurance which  
202 may not exceed the first day of the calendar month following 90 days from the date of hire.

203 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

204 (c) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time  
205 the contract is entered into or renewed:

206 ~~[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan  
207 determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

208 ~~[(B) under which the employer pays at least 50% of the premium for the employee and  
209 the dependents of the employee;]~~

210 ~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~

211 ~~[(I) the lowest deductible permitted for a federally qualified high deductible health  
212 plan; and]~~

213 ~~[(H) an out of pocket maximum that does not exceed three times the amount of the  
214 annual deductible; and]~~

215 ~~[(B) under which the employer pays 75% of the premium for the employee and the  
216 dependents of the employee; or]~~

217 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan  
218 determined under Subsection (1)(c)(i); and]~~

219 ~~[(B) under which the employer pays at least 75% of the premium of the employee and  
220 the dependents of the employee.]~~

221 (i) a health benefit plan and employer contribution level with a combined actuarial  
222 value at least actuarially equivalent to the combined actuarial value of the benchmark plan  
223 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),  
224 and a contribution level of 50% of the premium for the employee and the dependents of the  
225 employee who reside or work in the state, in which:

226           (A) the employer pays at least 50% of the premium for the employee and the  
227 dependents of the employee who reside or work in the state; and  
228           (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):  
229           (I) rather that the benchmark plan's deductible, and the benchmark plan's  
230 out-of-pocket maximum based on income levels:  
231           (Aa) the deductible is \$750 per individual and \$2,250 per family; and  
232           (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;  
233           (II) dental coverage is not required; and  
234           (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do  
235 not apply; or  
236           (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a  
237 deductible that is either:  
238           (I) the lowest deductible permitted for a federally qualified high deductible health  
239 plan; or  
240           (II) a deductible that is higher than the lowest deductible permitted for a federally  
241 qualified high deductible health plan, but includes an employer contribution to a health  
242 savings account in a dollar amount at least equal to the dollar amount difference between the  
243 lowest deductible permitted for a federally qualified high deductible plan and the deductible  
244 for the employer offered federally qualified high deductible plan;  
245           (B) an out-of-pocket maximum that does not exceed three times the amount of the  
246 annual deductible; and  
247           (C) under which the employer pays 75% of the premium for the employee and the  
248 dependents of the employee who work or reside in the state.  
249           (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.  
250           (2) (a) Except as provided in Subsection (3), this section applies to [~~all contracts~~] a  
251 design or construction contract entered into by or delegated to the department or a division or  
252 board of the department on or after July 1, 2009, [~~if:~~] and to a prime contractor or  
253 subcontractor in accordance with Subsection (2)(b).

254 [~~(a) the contract is for design or construction; and~~]

255 (b) (i) A prime contractor is subject to this section if the prime contract is in the  
256 amount of \$1,500,000 or greater~~[-or]~~.

257 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
258 \$750,000 or greater.

259 (3) This section does not apply to contracts entered into by the department or a  
260 division or board of the department if:

261 (a) the application of this section jeopardizes the receipt of federal funds;

262 (b) the contract or agreement is between:

263 (i) the department or a division or board of the department; and

264 (ii) (A) another agency of the state;

265 (B) the federal government;

266 (C) another state;

267 (D) an interstate agency;

268 (E) a political subdivision of this state; or

269 (F) a political subdivision of another state;

270 (c) the executive director determines that applying the requirements of this section to a  
271 particular contract interferes with the effective response to an immediate health and safety  
272 threat from the environment; or

273 (d) the contract is:

274 (i) a sole source contract; or

275 (ii) an emergency procurement.

276 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,  
277 or a modification to a contract, when the contract does not meet the initial threshold required  
278 by Subsection (2).

279 (b) A person who intentionally uses change orders or contract modifications to  
280 circumvent the requirements of Subsection (2) is guilty of an infraction.

281 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive

282 director that the contractor has and will maintain an offer of qualified health insurance  
283 coverage for the contractor's employees and the employees' dependents during the duration of  
284 the contract.

285 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall  
286 demonstrate to the executive director that the subcontractor has and will maintain an offer of  
287 qualified health insurance coverage for the subcontractor's employees and the employees'  
288 dependents during the duration of the contract.

289 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration  
290 of the contract is subject to penalties in accordance with administrative rules adopted by the  
291 department under Subsection (6).

292 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet  
293 the requirements of Subsection (5)(b).

294 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during  
295 the duration of the contract is subject to penalties in accordance with administrative rules  
296 adopted by the department under Subsection (6).

297 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet  
298 the requirements of Subsection (5)(a).

299 (6) The department shall adopt administrative rules:

300 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

301 (b) in coordination with:

302 (i) a public transit district in accordance with Section 17B-2a-818.5;

303 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

304 (iii) the State Building Board in accordance with Section 63A-5-205;

305 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

306 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

307 (vi) the Legislature's Administrative Rules Review Committee; and

308 (c) which establish:

309 (i) the requirements and procedures a contractor must follow to demonstrate to the

310 public transit district compliance with this section which shall include:

311 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)  
312 or (b) more than twice in any 12-month period; and

313 (B) that the actuarially equivalent determination required in Subsection (1) is met by  
314 the contractor if the contractor provides the department or division with a written statement of  
315 actuarial equivalency from either:

316 (I) the Utah Insurance Department ~~[or]~~;

317 (II) an actuary selected by the contractor or the contractor's insurer; ~~[and]~~ or

318 (III) an underwriter who is responsible for developing the employer group's premium  
319 rates;

320 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
321 violates the provisions of this section, which may include:

322 (A) a three-month suspension of the contractor or subcontractor from entering into  
323 future contracts with the state upon the first violation;

324 (B) a six-month suspension of the contractor or subcontractor from entering into  
325 future contracts with the state upon the second violation;

326 (C) an action for debarment of the contractor or subcontractor in accordance with  
327 Section 63G-6-804 upon the third or subsequent violation; and

328 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%  
329 of the amount necessary to purchase qualified health insurance coverage for an employee and  
330 the dependents of an employee of the contractor or subcontractor who was not offered  
331 qualified health insurance coverage during the duration of the contract~~[-];~~ and

332 (iii) a website on which the department shall post the benchmark for the qualified  
333 health insurance coverage identified in Subsection (1)(c)(i).

334 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or  
335 subcontractor who intentionally violates the provisions of this section shall be liable to the  
336 employee for health care costs ~~[not covered by insurance.]~~ that would have been covered by  
337 qualified health insurance coverage.

338 (ii) An employer has an affirmative defense to a cause of action under Subsection  
339 (7)(a)(i) if:

340 (A) the employer relied in good faith on a written statement of actuarial equivalency  
341 provided by:

342 (I) an actuary; or

343 (II) an underwriter who is responsible for developing the employer group's premium  
344 rates; or

345 (B) the department determines that compliance with this section is not required under  
346 the provisions of Subsection (3) or (4).

347 (b) An employee has a private right of action only against the employee's employer to  
348 enforce the provisions of this Subsection (7).

349 (8) Any penalties imposed and collected under this section shall be deposited into the  
350 Medicaid Restricted Account created in Section 26-18-402.

351 (9) The failure of a contractor or subcontractor to provide qualified health insurance  
352 coverage as required by this section:

353 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
354 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
355 Legal and Contractual Remedies; and

356 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
357 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
358 or construction.

359 Section 3. Section **31A-30-209** is enacted to read:

360 **31A-30-209. State contract requirements -- Employer default plans.**

361 (1) This section applies to an employer who is required to offer its employees a health  
362 benefit plan as a condition of qualifying for a state contract under:

363 (a) Section 17B-2a-818.5;

364 (b) Section 19-1-206;

365 (c) Subsection 63A-5-205(3);

366 (d) Section 63C-9-403;

367 (e) Section 72-6-107.5; and

368 (f) Section 79-2-404.

369 (2) An employer described in Subsection (1) shall, when selecting the default plan  
370 required in Section 31A-30-204, select a default plan that is "qualified health insurance  
371 coverage" as defined in the sections listed in Subsections (1)(a) through (f).

372 Section 4. Section **63A-5-205** is amended to read:

373 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**  
374 **coverage.**

375 (1) As used in this section:

376 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

377 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

378 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section  
379 34A-2-104 who:

380 (i) works at least 30 hours per calendar week; and

381 (ii) meets employer eligibility waiting requirements for health care insurance which  
382 may not exceed the first day of the calendar month following 90 days from the date of hire.

383 (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

384 (e) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time  
385 the contract is entered into or renewed:

386 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~  
387 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

388 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~  
389 ~~the dependents of the employee;]~~

390 [~~(ii) (A) is a federally qualified high deductible health plan that has:]~~

391 [~~(F) the lowest deductible permitted for a federally qualified high deductible health~~  
392 ~~plan; and]~~

393 [~~(H) an out of pocket maximum that does not exceed three times the amount of the~~

394 ~~annual deductible; and]~~

395  ~~[(B) under which the employer pays 75% of the premium for the employee and the~~  
396  ~~dependents of the employee; or]~~

397  ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~  
398  ~~determined under Subsection (1)(e)(i); and]~~

399  ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~  
400  ~~the dependents of the employee.]~~

401  (i) a health benefit plan and employer contribution level with a combined actuarial  
402  value at least actuarially equivalent to the combined actuarial value of the benchmark plan  
403  determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),  
404  and a contribution level of 50% of the premium for the employee and the dependents of the  
405  employee who reside or work in the state, in which:

406  (A) the employer pays at least 50% of the premium for the employee and the  
407  dependents of the employee who reside or work in the state; and

408  (B) for purposes of calculating actuarial equivalency under this Subsection (1)(e)(i):

409  (I) rather than the benchmark plan's deductible, and the benchmark plan's  
410  out-of-pocket maximum based on income levels:

411  (Aa) the deductible is \$750 per individual and \$2,250 per family; and

412  (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

413  (II) dental coverage is not required; and

414  (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do  
415  not apply; or

416  (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a  
417  deductible that is either:

418  (I) the lowest deductible permitted for a federally qualified high deductible health  
419  plan; or

420  (II) a deductible that is higher than the lowest deductible permitted for a federally  
421  qualified high deductible health plan, but includes an employer contribution to a health

422 savings account in a dollar amount at least equal to the dollar amount difference between the  
423 lowest deductible permitted for a federally qualified high deductible plan and the deductible  
424 for the employer offered federally qualified high deductible plan;

425 (B) an out-of-pocket maximum that does not exceed three times the amount of the  
426 annual deductible; and

427 (C) under which the employer pays 75% of the premium for the employee and the  
428 dependents of the employee who work or reside in the state.

429 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

430 (2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director  
431 may:

432 (a) subject to Subsection (3), enter into contracts for any work or professional services  
433 which the division or the State Building Board may do or have done; and

434 (b) as a condition of any contract for architectural or engineering services, prohibit the  
435 architect or engineer from retaining a sales or agent engineer for the necessary design work.

436 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all  
437 design or construction contracts entered into by the division or the State Building Board on or  
438 after July 1, 2009, [if] and:

439 [~~i~~] ~~the contract is for design or construction; and~~

440 [~~ii~~] ~~(A)~~ (i) applies to a prime contractor if the prime contract is in the amount of  
441 \$1,500,000 or greater; [~~or~~] and

442 [~~B~~] ~~a~~ (ii) applies to a subcontractor if the subcontract is in the amount of \$750,000  
443 or greater.

444 (b) This Subsection (3) does not apply:

445 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

446 (ii) if the contract is a sole source contract;

447 (iii) if the contract is an emergency procurement; or

448 (iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,  
449 when the contract does not meet the threshold required by Subsection (3)(a).

450 (c) A person who intentionally uses change orders or contract modifications to  
451 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

452 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that  
453 the contractor has and will maintain an offer of qualified health insurance coverage for the  
454 contractor's employees and the employees' dependents.

455 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor  
456 shall demonstrate to the director that the subcontractor has and will maintain an offer of  
457 qualified health insurance coverage for the subcontractor's employees and the employees'  
458 dependents.

459 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)  
460 during the duration of the contract is subject to penalties in accordance with administrative  
461 rules adopted by the division under Subsection (3)(f).

462 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet  
463 the requirements of Subsection (3)(d)(ii).

464 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)  
465 during the duration of the contract is subject to penalties in accordance with administrative  
466 rules adopted by the division under Subsection (3)(f).

467 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet  
468 the requirements of Subsection (3)(d)(i).

469 (f) The division shall adopt administrative rules:

470 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

471 (ii) in coordination with:

472 (A) the Department of Environmental Quality in accordance with Section 19-1-206;

473 (B) the Department of Natural Resources in accordance with Section 79-2-404;

474 (C) a public transit district in accordance with Section 17B-2a-818.5;

475 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

476 (E) the Department of Transportation in accordance with Section 72-6-107.5; and

477 (F) the Legislature's Administrative Rules Review Committee; and

478 (iii) which establish:

479 (A) the requirements and procedures a contractor must follow to demonstrate to the  
480 director compliance with this Subsection (3) which shall include:

481 (I) that a contractor will not have to demonstrate compliance with Subsection [~~(5)(a)~~  
482 ~~or (b)~~] (3)(d)(i) or (ii) more than twice in any 12-month period; and

483 (II) that the actuarially equivalent determination required in Subsection (1) is met by  
484 the contractor if the contractor provides the department or division with a written statement of  
485 actuarial equivalency from either:

486 (Aa) the Utah Insurance Department [or];

487 (Bb) an actuary selected by the contractor or the contractor's insurer; [and] or

488 (Cc) an underwriter who is responsible for developing the employer group's premium  
489 rates;

490 (B) the penalties that may be imposed if a contractor or subcontractor intentionally  
491 violates the provisions of this Subsection (3), which may include:

492 (I) a three-month suspension of the contractor or subcontractor from entering into  
493 future contracts with the state upon the first violation;

494 (II) a six-month suspension of the contractor or subcontractor from entering into future  
495 contracts with the state upon the second violation;

496 (III) an action for debarment of the contractor or subcontractor in accordance with  
497 Section 63G-6-804 upon the third or subsequent violation; and

498 (IV) monetary penalties which may not exceed 50% of the amount necessary to  
499 purchase qualified health insurance coverage for an employee and the dependents of an  
500 employee of the contractor or subcontractor who was not offered qualified health insurance  
501 coverage during the duration of the contract[-]; and

502 (C) a website on which the department shall post the benchmark for the qualified  
503 health insurance coverage identified in Subsection (1)(e)(i).

504 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or  
505 subcontractor who intentionally violates the provisions of this section shall be liable to the

506 employee for health care costs [~~not covered by insurance.~~] that would have been covered by  
507 qualified health insurance coverage.

508 (ii) An employer has an affirmative defense to a cause of action under Subsection  
509 (3)(g)(i) if:

510 (A) the employer relied in good faith on a written statement of actuarial equivalency  
511 provided by:

512 (I) an actuary; or

513 (II) an underwriter who is responsible for developing the employer group's premium  
514 rates; or

515 (B) the department determines that compliance with this section is not required under  
516 the provisions of Subsection (3)(b).

517 ~~[(ii)]~~ (iii) An employee has a private right of action only against the employee's  
518 employer to enforce the provisions of this Subsection (3)(g).

519 (h) Any penalties imposed and collected under this section shall be deposited into the  
520 Medicaid Restricted Account created by Section 26-18-402.

521 (i) The failure of a contractor or subcontractor to provide qualified health insurance  
522 coverage as required by this section:

523 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,  
524 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
525 Legal and Contractual Remedies; and

526 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or  
527 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
528 or construction.

529 (4) The judgment of the director as to the responsibility and qualifications of a bidder  
530 is conclusive, except in case of fraud or bad faith.

531 (5) The division shall make all payments to the contractor for completed work in  
532 accordance with the contract and pay the interest specified in the contract on any payments  
533 that are late.

534 (6) If any payment on a contract with a private contractor to do work for the division  
535 or the State Building Board is retained or withheld, it shall be retained or withheld and  
536 released as provided in Section 13-8-5.

537 Section 5. Section **63C-9-403** is amended to read:

538 **63C-9-403. Contracting power of executive director -- Health insurance**  
539 **coverage.**

540 (1) For purposes of this section:

541 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
542 34A-2-104 who:

543 (i) works at least 30 hours per calendar week; and

544 (ii) meets employer eligibility waiting requirements for health care insurance which  
545 may not exceed the first of the calendar month following 90 days from the date of hire.

546 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

547 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time  
548 the contract is entered into or renewed:

549 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~  
550 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

551 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~  
552 ~~the dependents of the employee;]~~

553 [~~(ii) (A) is a federally qualified high deductible health plan that has:]~~

554 [~~(I) the lowest deductible permitted for a federally qualified high deductible health~~  
555 ~~plan; and]~~

556 [~~(H) an out of pocket maximum that does not exceed three times the amount of the~~  
557 ~~annual deductible; and]~~

558 [~~(B) under which the employer pays 75% of the premium for the employee and the~~  
559 ~~dependents of the employee; or]~~

560 [~~(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~  
561 ~~determined under Subsection (1)(c)(i); and]~~

562 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~  
563 ~~the dependents of the employee.]~~

564 (i) a health benefit plan and employer contribution level with a combined actuarial  
565 value at least actuarially equivalent to the combined actuarial value of the benchmark plan  
566 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),  
567 and a contribution level of 50% of the premium for the employee and the dependents of the  
568 employee who reside or work in the state, in which:

569 (A) the employer pays at least 50% of the premium for the employee and the  
570 dependents of the employee who reside or work in the state; and

571 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

572 (I) rather that the benchmark plan's deductible, and the benchmark plan's  
573 out-of-pocket maximum based on income levels:

574 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

575 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

576 (II) dental coverage is not required; and

577 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do  
578 not apply; or

579 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a  
580 deductible that is either:

581 (I) the lowest deductible permitted for a federally qualified high deductible health  
582 plan; or

583 (II) a deductible that is higher than the lowest deductible permitted for a federally  
584 qualified high deductible health plan, but includes an employer contribution to a health  
585 savings account in a dollar amount at least equal to the dollar amount difference between the  
586 lowest deductible permitted for a federally qualified high deductible plan and the deductible  
587 for the employer offered federally qualified high deductible plan;

588 (B) an out-of-pocket maximum that does not exceed three times the amount of the  
589 annual deductible; and

590 (C) under which the employer pays 75% of the premium for the employee and the  
591 dependents of the employee who work or reside in the state.

592 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

593 (2) (a) Except as provided in Subsection (3), this section applies to ~~[all contracts]~~ a  
594 design or construction contract entered into by the board or on behalf of the board on or after  
595 July 1, 2009, ~~[if:]~~ and to a prime contractor or a subcontractor in accordance with Subsection  
596 (2)(b).

597 ~~[(a) the contract is for design or construction; and]~~

598 (b) (i) A prime contractor is subject to this section if the prime contract is in the  
599 amount of \$1,500,000 or greater~~[-or]~~.

600 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
601 \$750,000 or greater.

602 (3) This section does not apply if:

603 (a) the application of this section jeopardizes the receipt of federal funds;

604 (b) the contract is a sole source contract; or

605 (c) the contract is an emergency procurement.

606 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,  
607 or a modification to a contract, when the contract does not meet the initial threshold required  
608 by Subsection (2).

609 (b) A person who intentionally uses change orders or contract modifications to  
610 circumvent the requirements of Subsection (2) is guilty of an infraction.

611 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive  
612 director that the contractor has and will maintain an offer of qualified health insurance  
613 coverage for the contractor's employees and the employees' dependents during the duration of  
614 the contract.

615 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor  
616 shall demonstrate to the executive director that the subcontractor has and will maintain an  
617 offer of qualified health insurance coverage for the subcontractor's employees and the

618 employees' dependents during the duration of the contract.

619 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during  
620 the duration of the contract is subject to penalties in accordance with administrative rules  
621 adopted by the division under Subsection (6).

622 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet  
623 the requirements of Subsection (5)(b).

624 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during  
625 the duration of the contract is subject to penalties in accordance with administrative rules  
626 adopted by the department under Subsection (6).

627 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet  
628 the requirements of Subsection (5)(a).

629 (6) The department shall adopt administrative rules:

630 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

631 (b) in coordination with:

632 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

633 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

634 (iii) the State Building Board in accordance with Section 63A-5-205;

635 (iv) a public transit district in accordance with Section 17B-2a-818.5;

636 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

637 (vi) the Legislature's Administrative Rules Review Committee; and

638 (c) which establish:

639 (i) the requirements and procedures a contractor must follow to demonstrate to the  
640 executive director compliance with this section which shall include:

641 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)

642 or (b) more than twice in any 12-month period; and

643 (B) that the actuarially equivalent determination required in Subsection (1) is met by  
644 the contractor if the contractor provides the department or division with a written statement of  
645 actuarial equivalency from either;

646 (I) the Utah Insurance Department [or];  
647 (II) an actuary selected by the contractor or the contractor's insurer; [and] or  
648 (III) an underwriter who is responsible for developing the employer group's premium  
649 rates;

650 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
651 violates the provisions of this section, which may include:

652 (A) a three-month suspension of the contractor or subcontractor from entering into  
653 future contracts with the state upon the first violation;

654 (B) a six-month suspension of the contractor or subcontractor from entering into  
655 future contracts with the state upon the second violation;

656 (C) an action for debarment of the contractor or subcontractor in accordance with  
657 Section 63G-6-804 upon the third or subsequent violation; and

658 (D) monetary penalties which may not exceed 50% of the amount necessary to  
659 purchase qualified health insurance coverage for employees and dependents of employees of  
660 the contractor or subcontractor who were not offered qualified health insurance coverage  
661 during the duration of the contract[-]; and

662 (iii) a website on which the department shall post the benchmark for the qualified  
663 health insurance coverage identified in Subsection (1)(c)(i).

664 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or  
665 subcontractor who intentionally violates the provisions of this section shall be liable to the  
666 employee for health care costs [not covered by insurance.] that would have been covered by  
667 qualified health insurance coverage.

668 (ii) An employer has an affirmative defense to a cause of action under Subsection  
669 (7)(a)(i) if:

670 (A) the employer relied in good faith on a written statement of actuarial equivalency  
671 provided by:

672 (I) an actuary; or

673 (II) an underwriter who is responsible for developing the employer group's premium

674 rates; or

675 (B) the department determines that compliance with this section is not required under  
676 the provisions of Subsection (3) or (4).

677 (b) An employee has a private right of action only against the employee's employer to  
678 enforce the provisions of this Subsection (7).

679 (8) Any penalties imposed and collected under this section shall be deposited into the  
680 Medicaid Restricted Account created in Section 26-18-402.

681 (9) The failure of a contractor or subcontractor to provide qualified health insurance  
682 coverage as required by this section:

683 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
684 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
685 Legal and Contractual Remedies; and

686 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
687 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
688 or construction.

689 Section 6. Section **72-6-107.5** is amended to read:

690 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**  
691 **insurance coverage.**

692 (1) For purposes of this section:

693 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
694 34A-2-104 who:

695 (i) works at least 30 hours per calendar week; and

696 (ii) meets employer eligibility waiting requirements for health care insurance which  
697 may not exceed the first day of the calendar month following 90 days from the date of hire.

698 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

699 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time  
700 the contract is entered into or renewed:

701 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~

702 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and]~~  
703  ~~[(B) under which the employer pays at least 50% of the premium for the employee and~~  
704  ~~the dependents of the employee;]~~  
705  ~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~  
706  ~~[(F) the lowest deductible permitted for a federally qualified high deductible health~~  
707  ~~plan; and]~~  
708  ~~[(H) an out of pocket maximum that does not exceed three times the amount of the~~  
709  ~~annual deductible; and]~~  
710  ~~[(B) under which the employer pays 75% of the premium for the employee and the~~  
711  ~~dependents of the employee; or]~~  
712  ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~  
713  ~~determined under Subsection (1)(c)(i); and]~~  
714  ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~  
715  ~~the dependents of the employee.]~~  
716 (i) a health benefit plan and employer contribution level with a combined actuarial  
717 value at least actuarially equivalent to the combined actuarial value of the benchmark plan  
718 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),  
719 and a contribution level of 50% of the premium for the employee and the dependents of the  
720 employee who reside or work in the state, in which:  
721 (A) the employer pays at least 50% of the premium for the employee and the  
722 dependents of the employee who reside or work in the state; and  
723 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):  
724 (I) rather than the benchmark plan's deductible, and the benchmark plan's  
725 out-of-pocket maximum based on income levels:  
726 (Aa) the deductible is \$750 per individual and \$2,250 per family; and  
727 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;  
728 (II) dental coverage is not required; and  
729 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do

730 not apply; or

731 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a  
732 deductible that is either:

733 (I) the lowest deductible permitted for a federally qualified high deductible health  
734 plan; or

735 (II) a deductible that is higher than the lowest deductible permitted for a federally  
736 qualified high deductible health plan, but includes an employer contribution to a health  
737 savings account in a dollar amount at least equal to the dollar amount difference between the  
738 lowest deductible permitted for a federally qualified high deductible plan and the deductible  
739 for the employer offered federally qualified high deductible plan;

740 (B) an out-of-pocket maximum that does not exceed three times the amount of the  
741 annual deductible; and

742 (C) under which the employer pays 75% of the premium for the employee and the  
743 dependents of the employee who work or reside in the state.

744 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

745 (2) (a) Except as provided in Subsection (3), this section applies to [aH] contracts  
746 entered into by the department on or after July 1, 2009, for construction or design of highways  
747 [if:] and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

748 [~~a~~] (b) (i) A prime contractor is subject to this section if the prime contract is in the  
749 amount of \$1,500,000 or greater[; ~~or~~].

750 [~~b~~] (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
751 \$750,000 or greater.

752 (3) This section does not apply if:

753 (a) the application of this section jeopardizes the receipt of federal funds;

754 (b) the contract is a sole source contract; or

755 (c) the contract is an emergency procurement.

756 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,  
757 or a modification to a contract, when the contract does not meet the initial threshold required

758 by Subsection (2).

759 (b) A person who intentionally uses change orders or contract modifications to  
760 circumvent the requirements of Subsection (2) is guilty of an infraction.

761 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that  
762 the contractor has and will maintain an offer of qualified health insurance coverage for the  
763 contractor's employees and the employees' dependents during the duration of the contract.

764 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall  
765 demonstrate to the department that the subcontractor has and will maintain an offer of  
766 qualified health insurance coverage for the subcontractor's employees and the employees'  
767 dependents during the duration of the contract.

768 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during  
769 the duration of the contract is subject to penalties in accordance with administrative rules  
770 adopted by the department under Subsection (6).

771 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet  
772 the requirements of Subsection (5)(b).

773 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during  
774 the duration of the contract is subject to penalties in accordance with administrative rules  
775 adopted by the department under Subsection (6).

776 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet  
777 the requirements of Subsection (5)(a).

778 (6) The department shall adopt administrative rules:

779 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

780 (b) in coordination with:

781 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

782 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

783 (iii) the State Building Board in accordance with Section 63A-5-205;

784 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

785 (v) a public transit district in accordance with Section 17B-2a-818.5; and

786 (vi) the Legislature's Administrative Rules Review Committee; and  
787 (c) which establish:  
788 (i) the requirements and procedures a contractor must follow to demonstrate to the  
789 department compliance with this section which shall include:  
790 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)  
791 or (b) more than twice in any 12-month period; and  
792 (B) that the actuarially equivalent determination required in Subsection (1) is met by  
793 the contractor if the contractor provides the department or division with a written statement of  
794 actuarial equivalency from either:  
795 (I) the Utah Insurance Department [~~or~~];  
796 (II) an actuary selected by the contractor or the contractor's insurer; [~~and~~] or  
797 (III) an underwriter who is responsible for developing the employer group's premium  
798 rates;  
799 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
800 violates the provisions of this section, which may include:  
801 (A) a three-month suspension of the contractor or subcontractor from entering into  
802 future contracts with the state upon the first violation;  
803 (B) a six-month suspension of the contractor or subcontractor from entering into  
804 future contracts with the state upon the second violation;  
805 (C) an action for debarment of the contractor or subcontractor in accordance with  
806 Section 63G-6-804 upon the third or subsequent violation; and  
807 (D) monetary penalties which may not exceed 50% of the amount necessary to  
808 purchase qualified health insurance coverage for an employee and a dependent of the  
809 employee of the contractor or subcontractor who was not offered qualified health insurance  
810 coverage during the duration of the contract~~[-]; and~~  
811 (iii) a website on which the department shall post the benchmark for the qualified  
812 health insurance coverage identified in Subsection (1)(c)(i).  
813 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or

814 subcontractor who intentionally violates the provisions of this section shall be liable to the  
815 employee for health care costs [~~not covered by insurance.~~] that would have been covered by  
816 qualified health insurance coverage.

817 (ii) An employer has an affirmative defense to a cause of action under Subsection  
818 (7)(a)(i) if:

819 (A) the employer relied in good faith on a written statement of actuarial equivalency  
820 provided by:

821 (I) an actuary; or

822 (II) an underwriter who is responsible for developing the employer group's premium  
823 rates; or

824 (B) the department determines that compliance with this section is not required under  
825 the provisions of Subsection (3) or (4).

826 (b) An employee has a private right of action only against the employee's employer to  
827 enforce the provisions of this Subsection (7).

828 (8) Any penalties imposed and collected under this section shall be deposited into the  
829 Medicaid Restricted Account created in Section 26-18-402.

830 (9) The failure of a contractor or subcontractor to provide qualified health insurance  
831 coverage as required by this section:

832 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
833 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
834 Legal and Contractual Remedies; and

835 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
836 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
837 or construction.

838 Section 7. Section **79-2-404** is amended to read:

839 **79-2-404. Contracting powers of department -- Health insurance coverage.**

840 (1) For purposes of this section:

841 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section

842 34A-2-104 who:

843 (i) works at least 30 hours per calendar week; and

844 (ii) meets employer eligibility waiting requirements for health care insurance which  
845 may not exceed the first day of the calendar month following 90 days from the date of hire.

846 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

847 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time  
848 the contract is entered into or renewed:

849 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan  
850 determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

851 [~~(B) under which the employer pays at least 50% of the premium for the employee and  
852 the dependents of the employee;~~]

853 [~~(ii) (A) is a federally qualified high deductible health plan that has:]~~

854 [~~(F) the lowest deductible permitted for a federally qualified high deductible health  
855 plan; and]~~

856 [~~(H) an out of pocket maximum that does not exceed three times the amount of the  
857 annual deductible; and]~~

858 [~~(B) under which the employer pays 75% of the premium for the employee and the  
859 dependents of the employee; or]~~

860 [~~(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan  
861 determined under Subsection (1)(c)(i); and]~~

862 [~~(B) under which the employer pays at least 75% of the premium of the employee and  
863 the dependents of the employee.]~~

864 (i) a health benefit plan and employer contribution level with a combined actuarial  
865 value at least actuarially equivalent to the combined actuarial value of the benchmark plan  
866 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a),  
867 and a contribution level of 50% of the premium for the employee and the dependents of the  
868 employee who reside or work in the state, in which:

869 (A) the employer pays at least 50% of the premium for the employee and the

870 dependents of the employee who reside or work in the state; and  
871 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):  
872 (I) rather that the benchmark plan's deductible, and the benchmark plan's  
873 out-of-pocket maximum based on income levels:  
874 (Aa) the deductible is \$750 per individual and \$2,250 per family; and  
875 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;  
876 (II) dental coverage is not required; and  
877 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do  
878 not apply; or  
879 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a  
880 deductible that is either:  
881 (I) the lowest deductible permitted for a federally qualified high deductible health  
882 plan; or  
883 (II) a deductible that is higher than the lowest deductible permitted for a federally  
884 qualified high deductible health plan, but includes an employer contribution to a health  
885 savings account in a dollar amount at least equal to the dollar amount difference between the  
886 lowest deductible permitted for a federally qualified high deductible plan and the deductible  
887 for the employer offered federally qualified high deductible plan;  
888 (B) an out-of-pocket maximum that does not exceed three times the amount of the  
889 annual deductible; and  
890 (C) under which the employer pays 75% of the premium for the employee and the  
891 dependents of the employee who work or reside in the state.  
892 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.  
893 (2) (a) Except as provided in Subsection (3), this section applies [~~to all contracts~~] a  
894 design or construction contract entered into by, or delegated to, the department or a division,  
895 board, or council of the department on or after July 1, 2009, [~~if:~~] and to a prime contractor or  
896 to a subcontractor in accordance with Subsection (2)(b).  
897 [~~(a) the contract is for design or construction; and~~]

898 (b) (i) A prime contractor is subject to this section if the prime contract is in the  
899 amount of \$1,500,000 or greater~~[; or]~~.

900 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
901 \$750,000 or greater.

902 (3) This section does not apply to contracts entered into by the department or a  
903 division, board, or council of the department if:

904 (a) the application of this section jeopardizes the receipt of federal funds;

905 (b) the contract or agreement is between:

906 (i) the department or a division, board, or council of the department; and

907 (ii) (A) another agency of the state;

908 (B) the federal government;

909 (C) another state;

910 (D) an interstate agency;

911 (E) a political subdivision of this state; or

912 (F) a political subdivision of another state; or

913 (c) the contract or agreement is:

914 (i) for the purpose of disbursing grants or loans authorized by statute;

915 (ii) a sole source contract; or

916 (iii) an emergency procurement.

917 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,  
918 or a modification to a contract, when the contract does not meet the initial threshold required  
919 by Subsection (2).

920 (b) A person who intentionally uses change orders or contract modifications to  
921 circumvent the requirements of Subsection (2) is guilty of an infraction.

922 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department  
923 that the contractor has and will maintain an offer of qualified health insurance coverage for the  
924 contractor's employees and the employees' dependents during the duration of the contract.

925 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the

926 contractor shall demonstrate to the department that the subcontractor has and will maintain an  
927 offer of qualified health insurance coverage for the subcontractor's employees and the  
928 employees' dependents during the duration of the contract.

929 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during  
930 the duration of the contract is subject to penalties in accordance with administrative rules  
931 adopted by the department under Subsection (6).

932 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet  
933 the requirements of Subsection (5)(b).

934 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during  
935 the duration of the contract is subject to penalties in accordance with administrative rules  
936 adopted by the department under Subsection (6).

937 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet  
938 the requirements of Subsection (5)(a).

939 (6) The department shall adopt administrative rules:

940 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

941 (b) in coordination with:

942 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

943 (ii) a public transit district in accordance with Section 17B-2a-818.5;

944 (iii) the State Building Board in accordance with Section 63A-5-205;

945 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

946 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

947 (vi) the Legislature's Administrative Rules Review Committee; and

948 (c) which establish:

949 (i) the requirements and procedures a contractor must follow to demonstrate  
950 compliance with this section to the department which shall include:

951 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)  
952 or (b) more than twice in any 12-month period; and

953 (B) that the actuarially equivalent determination required in Subsection (1) is met by

954 the contractor if the contractor provides the department or division with a written statement of  
955 actuarial equivalency from either:

- 956 (I) the Utah Insurance Department [or];
- 957 (II) an actuary selected by the contractor or the contractor's insurer; [and] or
- 958 (III) an underwriter who is responsible for developing the employer group's premium  
959 rates;

960 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
961 violates the provisions of this section, which may include:

962 (A) a three-month suspension of the contractor or subcontractor from entering into  
963 future contracts with the state upon the first violation;

964 (B) a six-month suspension of the contractor or subcontractor from entering into  
965 future contracts with the state upon the second violation;

966 (C) an action for debarment of the contractor or subcontractor in accordance with  
967 Section 63G-6-804 upon the third or subsequent violation; and

968 (D) monetary penalties which may not exceed 50% of the amount necessary to  
969 purchase qualified health insurance coverage for an employee and a dependent of an employee  
970 of the contractor or subcontractor who was not offered qualified health insurance coverage  
971 during the duration of the contract[-]; and

972 (iii) a website on which the department shall post the benchmark for the qualified  
973 health insurance coverage identified in Subsection (1)(c)(i).

974 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or  
975 subcontractor who intentionally violates the provisions of this section shall be liable to the  
976 employee for health care costs [~~not covered by insurance.~~] that would have been covered by  
977 qualified health insurance coverage.

978 (ii) An employer has an affirmative defense to a cause of action under Subsection  
979 (7)(a)(i) if:

980 (A) the employer relied in good faith on a written statement of actuarial equivalency  
981 provided by:

982           (I) an actuary; or  
983           (II) an underwriter who is responsible for developing the employer group's premium  
984 rates; or

985           (B) the department determines that compliance with this section is not required under  
986 the provisions of Subsection (3) or (4).

987           (b) An employee has a private right of action only against the employee's employer to  
988 enforce the provisions of this Subsection (7).

989           (8) Any penalties imposed and collected under this section shall be deposited into the  
990 Medicaid Restricted Account created in Section 26-18-402.

991           (9) The failure of a contractor or subcontractor to provide qualified health insurance  
992 coverage as required by this section:

993           (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
994 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
995 Legal and Contractual Remedies; and

996           (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
997 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
998 or construction.