

Senator Gene Davis proposes the following substitute bill:

AMENDMENTS TO HEALTH INSURANCE

COVERAGE IN STATE CONTRACTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Gene Davis

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **17B-2a-818.5**, as enacted by Laws of Utah 2009, Chapter 13

33 **19-1-206**, as enacted by Laws of Utah 2009, Chapter 13

34 **63A-5-205**, as last amended by Laws of Utah 2009, Chapter 13

35 **63C-9-403**, as enacted by Laws of Utah 2009, Chapter 13

36 **72-6-107.5**, as enacted by Laws of Utah 2009, Chapter 13

37 **79-2-404**, as enacted by Laws of Utah 2009, Chapter 13

38 ENACTS:

39 **31A-30-209**, Utah Code Annotated 1953



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

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

43 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
44 **coverage.**

45 (1) For purposes of this section:

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

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

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

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

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

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

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

57 ~~the dependents of the employee;]~~

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

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

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

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

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

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

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

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

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

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

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

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

81 (II) dental coverage is not required; and

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

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

86 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

87 or

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

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

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

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

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

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

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

104 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
105 \$750,000 or greater.

106 (3) This section does not apply if:

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

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

109 (c) the contract is an emergency procurement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

141 [~~(vi) the Legislature's Administrative Rules Review Committee; and~~]

142 [~~(c)~~] (b) which establish:

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

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

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

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

150 (I) the Utah Insurance Department; ~~[or]~~
151 (II) an actuary selected by the contractor or the contractor's insurer; ~~[and]~~ or
152 (III) an underwriter who is responsible for developing the employer group's premium
153 rates;

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

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

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

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

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

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

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

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

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

176 (I) actuary; or

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

178 or

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

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

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

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

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

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

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

194 **19-1-206. Contracting powers of department -- Health insurance coverage.**

195 (1) For purposes of this section:

196 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
197 34A-2-104 who:

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

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

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

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

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

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

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

209 [~~(f) the lowest deductible permitted for a federally qualified high deductible health
210 plan; and]~~

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

212 ~~annual deductible; and]~~

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

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

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

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

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

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

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

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

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

231 (II) dental coverage is not required; and

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

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

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

238 (II) a deductible that is higher than the lowest deductible permitted for a federally
239 qualified high deductible health plan, but includes an employer contribution to a health savings
240 account in a dollar amount at least equal to the dollar amount difference between the lowest
241 deductible permitted for a federally qualified high deductible plan and the deductible for the
242 employer offered federally qualified high deductible plan;

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

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

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

248 (2) (a) Except as provided in Subsection (3), this section applies to [~~all contracts~~] a
249 design or construction contract entered into by or delegated to the department or a division or
250 board of the department on or after July 1, 2009, [~~if:~~] and to a prime contractor or subcontractor
251 in accordance with Subsection (2)(b).

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

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

255 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
256 \$750,000 or greater.

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

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

260 (b) the contract or agreement is between:

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

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

263 (B) the federal government;

264 (C) another state;

265 (D) an interstate agency;

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

267 (F) a political subdivision of another state;

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

271 (d) the contract is:

272 (i) a sole source contract; or

273 (ii) an emergency procurement.

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

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

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

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

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

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

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

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

297 (6) The department shall adopt administrative rules:

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

299 (b) in coordination with:

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

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

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

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

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

305 (vi) the Legislature's Administrative Rules Review Committee; and
306 (c) which establish:
307 (i) the requirements and procedures a contractor must follow to demonstrate to the
308 public transit district compliance with this section which shall include:
309 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
310 (b) more than twice in any 12-month period; and
311 (B) that the actuarially equivalent determination required in Subsection (1) is met by
312 the contractor if the contractor provides the department or division with a written statement of
313 actuarial equivalency from either:
314 (I) the Utah Insurance Department [or];
315 (II) an actuary selected by the contractor or the contractor's insurer; [and] or
316 (III) an underwriter who is responsible for developing the employer group's premium
317 rates;
318 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
319 violates the provisions of this section, which may include:
320 (A) a three-month suspension of the contractor or subcontractor from entering into
321 future contracts with the state upon the first violation;
322 (B) a six-month suspension of the contractor or subcontractor from entering into future
323 contracts with the state upon the second violation;
324 (C) an action for debarment of the contractor or subcontractor in accordance with
325 Section 63G-6-804 upon the third or subsequent violation; and
326 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
327 of the amount necessary to purchase qualified health insurance coverage for an employee and
328 the dependents of an employee of the contractor or subcontractor who was not offered qualified
329 health insurance coverage during the duration of the contract[-]; and
330 (iii) a website on which the department shall post the benchmark for the qualified
331 health insurance coverage identified in Subsection (1)(c)(i).
332 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
333 subcontractor who intentionally violates the provisions of this section shall be liable to the
334 employee for health care costs [~~not covered by insurance.~~] that would have been covered by
335 qualified health insurance coverage.

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

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

340 (I) an actuary; or

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

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

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

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

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

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

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

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

358 **31A-30-209. State contract requirements -- Employer default plans.**

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

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

362 (b) Section 19-1-206;

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

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

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

366 (f) Section 79-2-404.

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

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

371 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
 372 **coverage.**

373 (1) As used in this section:

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

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

376 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
 377 34A-2-104 who:

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

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

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

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

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

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

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

389 [~~(i) the lowest deductible permitted for a federally qualified high deductible health~~
 390 ~~plan; and]~~

391 [~~(ii) an out of pocket maximum that does not exceed three times the amount of the~~
 392 ~~annual deductible; and]~~

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

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

397 [~~(B) under which the employer pays at least 75% of the premium of the employee and~~

398 ~~the dependents of the employee.]~~

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

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

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

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

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

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

411 (II) dental coverage is not required; and

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

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

416 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

417 or

418 (II) a deductible that is higher than the lowest deductible permitted for a federally
419 qualified high deductible health plan, but includes an employer contribution to a health savings
420 account in a dollar amount at least equal to the dollar amount difference between the lowest
421 deductible permitted for a federally qualified high deductible plan and the deductible for the
422 employer offered federally qualified high deductible plan;

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

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

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

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

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

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

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

436 [~~(i) the contract is for design or construction; and~~]

437 [~~(ii)(A)~~] (i) applies to a prime contractor if the prime contract is in the amount of
438 \$1,500,000 or greater; [~~or~~] and

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

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

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

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

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

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

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

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

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

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

459 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the

460 requirements of Subsection (3)(d)(ii).

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

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

466 (f) The division shall adopt administrative rules:

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

468 (ii) in coordination with:

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

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

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

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

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

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

475 (iii) which establish:

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

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

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

483 (Aa) the Utah Insurance Department ~~[or]~~;

484 (Bb) an actuary selected by the contractor or the contractor's insurer; ~~and~~ or

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

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

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

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

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

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

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

501 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
502 subcontractor who intentionally violates the provisions of this section shall be liable to the
503 employee for health care costs [~~not covered by insurance.~~] that would have been covered by
504 qualified health insurance coverage.

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

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

509 (I) an actuary; or

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

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

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

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

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

520 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
521 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,

522 Legal and Contractual Remedies; and

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

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

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

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

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

535 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

536 (1) For purposes of this section:

537 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
538 34A-2-104 who:

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

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

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

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

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

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

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

550 [~~(f) the lowest deductible permitted for a federally qualified high deductible health
551 plan; and]~~

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

553 ~~annual deductible; and]~~

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

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

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

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

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

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

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

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

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

572 (II) dental coverage is not required; and

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

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

577 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

578 or

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

581 account in a dollar amount at least equal to the dollar amount difference between the lowest

582 deductible permitted for a federally qualified high deductible plan and the deductible for the

583 employer offered federally qualified high deductible plan;

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

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

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

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

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

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

596 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
597 \$750,000 or greater.

598 (3) This section does not apply if:

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

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

601 (c) the contract is an emergency procurement.

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

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

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

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

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

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

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

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

625 (6) The department shall adopt administrative rules:

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

627 (b) in coordination with:

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

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

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

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

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

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

634 (c) which establish:

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

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

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

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

642 (I) the Utah Insurance Department [or];

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

644 (III) an underwriter who is responsible for developing the employer group's premium

645 rates;

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

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

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

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

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

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

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

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

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

668 (I) an actuary; or

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

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

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

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

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

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

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

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

686 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
687 **insurance coverage.**

688 (1) For purposes of this section:

689 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
690 34A-2-104 who:

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

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

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

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

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

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

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

702 [~~(f) the lowest deductible permitted for a federally qualified high deductible health~~
703 ~~plan; and]~~

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

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

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

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

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

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

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

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

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

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

724 (II) dental coverage is not required; and

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

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

729 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

730 or

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

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

738 (C) under which the employer pays 75% of the premium for the employee and the

739 dependents of the employee who work or reside in the state.

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

741 (2) (a) Except as provided in Subsection (3), this section applies to ~~all~~ contracts
742 entered into by the department on or after July 1, 2009, for construction or design of highways
743 ~~if:~~ and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

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

746 ~~(b)~~ (ii) A subcontractor is subject to this section if a subcontract is in the amount of
747 \$750,000 or greater.

748 (3) This section does not apply if:

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

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

751 (c) the contract is an emergency procurement.

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

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

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

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

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

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

769 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during

770 the duration of the contract is subject to penalties in accordance with administrative rules
771 adopted by the department under Subsection (6).

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

774 (6) The department shall adopt administrative rules:

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

776 (b) in coordination with:

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

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

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

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

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

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

783 (c) which establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

817 (I) an actuary; or

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

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

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

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

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

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

831 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

832 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
833 or construction.

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

835 **79-2-404. Contracting powers of department -- Health insurance coverage.**

836 (1) For purposes of this section:

837 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
838 34A-2-104 who:

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

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

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

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

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

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

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

850 [~~(f) the lowest deductible permitted for a federally qualified high deductible health
851 plan; and]~~

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

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

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

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

860 (i) a health benefit plan and employer contribution level with a combined actuarial
861 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
862 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and

863 a contribution level of 50% of the premium for the employee and the dependents of the
864 employee who reside or work in the state, in which:

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

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

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

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

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

872 (II) dental coverage is not required; and

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

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

877 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

878 or

879 (II) a deductible that is higher than the lowest deductible permitted for a federally
880 qualified high deductible health plan, but includes an employer contribution to a health savings
881 account in a dollar amount at least equal to the dollar amount difference between the lowest
882 deductible permitted for a federally qualified high deductible plan and the deductible for the
883 employer offered federally qualified high deductible plan;

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

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

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

889 (2) (a) Except as provided in Subsection (3), this section applies [~~to all contracts~~] a
890 design or construction contract entered into by, or delegated to, the department or a division,
891 board, or council of the department on or after July 1, 2009, [~~if:~~] and to a prime contractor or to
892 a subcontractor in accordance with Subsection (2)(b).

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

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

896 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
897 \$750,000 or greater.

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

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

901 (b) the contract or agreement is between:

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

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

904 (B) the federal government;

905 (C) another state;

906 (D) an interstate agency;

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

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

909 (c) the contract or agreement is:

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

911 (ii) a sole source contract; or

912 (iii) an emergency procurement.

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

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

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

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

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

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

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

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

935 (6) The department shall adopt administrative rules:

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

937 (b) in coordination with:

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

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

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

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

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

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

944 (c) which establish:

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

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

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

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

952 (I) the Utah Insurance Department [or];

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

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

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

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

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

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

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

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

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

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

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

978 (I) an actuary; or

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

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

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

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

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

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

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

Fiscal Note

**H.B. 20 1st Sub. (Buff) - Amendments to Health Insurance Coverage in State
Contracts**

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
