

1 **SMALL GROUP HEALTH INSURANCE -**
2 **STATEWIDE RISK ADJUSTMENT**

3 2010 GENERAL SESSION
4 STATE OF UTAH

5 **Chief Sponsor: Jackie Biskupski**

6 Senate Sponsor: _____



8 **LONG TITLE**

9 **General Description:**

10 This bill expands the Utah Statewide Risk Adjuster Act to include any health benefit
11 plan offered to a small employer group on or after January 1, including a plan offered to
12 a small employer group not participating in a defined contribution arrangement in the
13 Utah Health Exchange.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ renames the Defined Contribution Risk Adjuster Act as the Utah Statewide Risk
17 Adjuster Act;
- 18 ▶ renames the board of the Utah Defined Contribution Risk Adjuster as the Utah
19 Statewide Risk Adjuster Board;
- 20 ▶ defines "carrier";
- 21 ▶ expands the Utah Statewide Risk Adjuster Act to include any health benefit plan
22 offered to a small employer group on or after January 1, 2011, including a plan
23 offered to a small employer group not participating in a defined contribution
24 arrangement;
- 25 ▶ amends provisions of the Utah Statewide Risk Adjuster Board;
- 26 ▶ amends provisions relating to the Utah Statewide Risk Adjuster Board's plan of
27 operation for the Utah Statewide Risk Adjuster;



- 28 ▶ amends Utah Statewide Risk Adjuster Board reporting provisions;
- 29 ▶ reorganizes provisions of the Utah Statewide Risk Adjuster Act;
- 30 ▶ makes conforming amendments; and
- 31 ▶ makes technical and clarifying amendments.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **31A-30-204**, as enacted by Laws of Utah 2009, Chapter 12
- 39 **31A-42-101**, as enacted by Laws of Utah 2009, Chapter 12
- 40 **31A-42-102**, as enacted by Laws of Utah 2009, Chapter 12
- 41 **31A-42-103**, as enacted by Laws of Utah 2009, Chapter 12
- 42 **31A-42-201**, as enacted by Laws of Utah 2009, Chapter 12
- 43 **31A-42-202**, as enacted by Laws of Utah 2009, Chapter 12
- 44 **31A-42-203**, as enacted by Laws of Utah 2009, Chapter 12
- 45 **31A-42-204**, as enacted by Laws of Utah 2009, Chapter 12



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

48 Section 1. Section **31A-30-204** is amended to read:

49 **31A-30-204. Employer responsibilities -- Defined contribution arrangements.**

50 (1) (a) (i) An employer described in Subsection 31A-30-203(1) that chooses to
51 participate in a defined contribution arrangement may not offer a major medical health benefit
52 plan that is not a part of the defined contribution arrangement to an employee.

53 (ii) Subsection (1)(a)(i) does not prohibit the offer of supplemental or limited benefit
54 policies such as dental or vision coverage, or other types of federally qualified savings accounts
55 for health care expenses.

56 (b) (i) To the extent permitted by the risk adjustment plan adopted under Section
57 [~~31A-42-202~~] 31A-42-204, the employer reserves the right to determine:

58 (A) the criteria for employee eligibility, enrollment, and participation in the employer's

59 health benefit plan; and

60 (B) the amount of the employer's contribution to that plan.

61 (ii) The determinations made under Subsection (1)(b) may only be changed during
62 periods of open enrollment.

63 (2) An employer that chooses to establish a defined contribution arrangement to
64 provide a health benefit plan for its employees shall:

65 (a) establish a mechanism for its employees to use pre-tax dollars to purchase a health
66 benefit plan from the defined contribution arrangement market on the Internet portal created in
67 Section 63M-1-2504, which may include:

68 (i) a health reimbursement arrangement;

69 (ii) a Section 125 Cafeteria plan; or

70 (iii) another plan or arrangement similar to Subsection (2)(a)(i) or (ii) which is
71 excluded or deducted from gross income under the Internal Revenue Code;

72 (b) by November 10 of the open enrollment period:

73 (i) inform each employee of the health benefit plan the employer has selected as the
74 default health benefit plan for the employer group;

75 (ii) offer each employee a choice of any of the health benefit plans available through
76 the defined contribution arrangement market on the Internet portal; and

77 (iii) notify the employee that the employee will be enrolled in the default health benefit
78 plan selected by the employer and payroll deductions initiated for premium payments, unless
79 the employee, prior to November 25 of the open enrollment period:

80 (A) notifies the employer that the employee has selected a different health benefit plan
81 available through the defined contribution arrangement in the Internet portal;

82 (B) provides proof of coverage from another health benefit plan; or

83 (C) specifically declines coverage in a health benefit plan.

84 (3) An employer shall enroll an employee in the default health benefit plan selected by
85 the employer if the employee does not make one of the choices described in Subsection
86 (2)(b)(ii) prior to November 25 of the open enrollment period.

87 (4) The employer's notice to the employee under Subsection (2)(b)(iii) shall inform the
88 employee that the failure to act under Subsections (2)(b)(iii)(A) through (C) is considered an
89 affirmative election under pre-tax payroll deductions for the employer to begin payroll

90 deductions for health benefit plan premiums.

91 Section 2. Section 31A-42-101 is amended to read:

92 **CHAPTER 42. UTAH STATEWIDE RISK ADJUSTER ACT**

93 **31A-42-101. Title.**

94 This chapter is known as the "[~~Defined Contribution~~] Utah Statewide Risk Adjuster
95 Act."

96 Section 3. Section 31A-42-102 is amended to read:

97 **31A-42-102. Definitions.**

98 As used in this chapter:

99 (1) "Board" means the [~~board of directors of the Utah Defined Contribution~~] Utah
100 Statewide Risk Adjuster Board created in Section 31A-42-201.

101 [~~(2) "Risk adjuster" means the defined contribution risk adjustment mechanism created~~
102 ~~in Section 31A-42-201.~~]

103 (2) "Carrier" has the same meaning as defined in Section 31A-30-103.

104 Section 4. Section 31A-42-103 is amended to read:

105 **31A-42-103. Applicability and scope.**

106 This chapter applies to:

107 (1) a carrier [~~as defined in Section 31A-30-103 who~~] that offers a health benefit plan in
108 a defined contribution arrangement under Chapter 30, Part 2, Defined Contribution
109 Arrangements[~~;~~]; and

110 (2) any health benefit plan offered to a small employer group on or after January 1,
111 2011, including a plan offered to a small employer group not participating in a defined
112 contribution arrangement.

113 Section 5. Section 31A-42-201 is amended to read:

114 **31A-42-201. Creation of Utah Statewide Risk Adjuster -- Creation of Utah**
115 **Statewide Risk Adjuster Board -- Appointment -- Terms -- Compensation -- Quorum.**

116 (1) There is created the "Utah [~~Defined Contribution~~] Statewide Risk Adjuster," a
117 nonprofit entity within the Insurance Department.

118 (2) (a) [~~The risk adjuster shall be under the direction of a board of directors~~] There is
119 created the Utah Statewide Risk Adjuster Board composed of up to nine members described in
120 Subsection (2)(b).

121 (b) The board of directors shall consist of:
 122 ~~[(b) The]~~ (i) the following directors ~~[shall be]~~ appointed by the governor with the
 123 consent of the Senate:
 124 ~~[(i)]~~ (A) at least three, but up to five, directors with actuarial experience who represent
 125 ~~[insurance]~~ carriers:
 126 ~~[(A)]~~ (I) that are participating or have committed to participate in the defined
 127 contribution arrangement market in the state; and
 128 ~~[(B)]~~ (II) including at least one and up to two directors who represent a carrier that has
 129 a small percentage of lives in the defined contribution market;
 130 ~~[(ii)]~~ (B) one director who represents either an individual employee or employer
 131 ~~[participant in the defined contribution market]; and~~
 132 ~~[(iii) one director appointed by the governor to represent]~~
 133 (C) one director who represents the Office of Consumer Health Services within the
 134 Governor's Office of Economic Development;
 135 ~~[(iv)]~~ (ii) one director representing the Public Employee's Health ~~[Benefit]~~ Program
 136 with actuarial experience, chosen by the director of the Public Employee's Health ~~[Benefit]~~
 137 ~~Program who shall serve as an ex officio member; and]~~ Program; and
 138 (iii) the commissioner, or a representative of the commissioner who:
 139 (A) is appointed by the commissioner; and
 140 (B) has actuarial experience.
 141 ~~[(v) the]~~ (c) The commissioner or a representative ~~[from the department with actuarial~~
 142 ~~experience]~~ appointed by the commissioner, ~~[who will only have voting privileges]~~ may vote
 143 only in the event of a tie vote.
 144 (3) (a) Except as required by Subsection (3)(b), as terms of current board members
 145 appointed by the governor expire, the governor shall appoint each new member or reappointed
 146 member to a four-year term.
 147 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
 148 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
 149 board members are staggered so that approximately half of the board is appointed every two
 150 years.
 151 (4) When a vacancy occurs in the membership for any reason, the replacement shall be

152 appointed for the unexpired term in the same manner as the original appointment was made.

153 (5) (a) Members who are not government employees shall receive no compensation or
154 benefits for the members' services.

155 (b) A state government member who is a member because of the member's state
156 government position may not receive per diem or expenses for the member's service.

157 (6) The board shall elect annually a chair and vice chair from its membership.

158 (7) Six board members are a quorum for the transaction of business.

159 (8) The action of a majority of the members of the quorum is the action of the board.

160 (9) The commissioner may designate an executive secretary from the department to
161 provide administrative assistance to the board in carrying out its responsibilities.

162 (10) (a) The Utah Statewide Risk Adjuster operates under the direction of the board in
163 accordance with rules adopted by the commissioner under Section 31A-42-204.

164 (b) The budget for operation of the Utah Statewide Risk Adjuster is subject to the
165 approval of the board.

166 Section 6. Section **31A-42-202** is amended to read:

167 **31A-42-202. Board to develop proposed Utah Statewide Risk Adjuster plan of**
168 **operation.**

169 [~~(1) The board shall submit a plan of operation for the risk adjuster to the~~
170 ~~commissioner. The plan shall:]~~

171 [~~(a) establish the methodology for implementing Subsection (2) for]~~

172 (1) The Utah Statewide Risk Adjuster Board shall submit to the commissioner a
173 proposed plan of operation for the Utah Statewide Risk Adjuster. The proposed plan of
174 operation shall:

175 (a) specify how the Utah Statewide Risk Adjuster shall adjust risk for:

176 (i) the defined contribution arrangement market established under Chapter 30, Part 2,
177 Defined Contribution Arrangements; and

178 (ii) any health benefit plan offered to a small employer group on or after January 1,
179 2011, including a plan offered to a small employer group not participating in a defined
180 contribution arrangement;

181 (b) establish regular times and places for meetings of the board;

182 (c) establish procedures for keeping records of all financial transactions and for

183 sending annual fiscal reports to the commissioner;

184 (d) contain additional provisions necessary and proper for the execution of the powers
185 and duties of the ~~[risk adjuster]~~ Utah Statewide Risk Adjuster; and

186 (e) establish procedures in compliance with Title 63A, Utah Administrative Services
187 Code, to pay for administrative expenses incurred.

188 ~~[(2)(a) The plan adopted by the board]~~

189 (2) The proposed plan of operation under Subsection (1) shall include:

190 (a) for the defined contribution arrangement market [shall include]:

191 (i) parameters an employer may use to designate eligible employees for the defined
192 contribution arrangement market; and

193 (ii) ~~[underwriting mechanisms and]~~ employer eligibility guidelines ~~[: (A) consistent~~
194 ~~with the federal Health Insurance Portability and Accountability Act, and (B) necessary to~~
195 ~~protect insurance]~~ that protect carriers from adverse selection in the defined contribution
196 market[-];

197 ~~[(b) The plan required by Subsection (2)(a) shall outline how premium rates for a~~
198 ~~qualified individual are determined, including:]~~

199 ~~[(i) the identification of an initial rate for a qualified individual based on:]~~

200 ~~[(A) standardized age bands submitted by participating insurers; and]~~

201 ~~[(B) wellness incentives for the individual as permitted by federal law; and]~~

202 ~~[(ii) the identification of a group risk factor to be applied to the initial age rate of a~~
203 ~~qualified individual based on the health conditions of all qualified individuals in the same~~
204 ~~employer group and, for small employers, in accordance with Sections 31A-30-105 and~~
205 ~~31A-30-106.]~~

206 ~~[(c) The plan adopted under Subsection (2)(a) shall outline how:]~~

207 ~~[(i) (iii) (A) how premium contributions for qualified individuals shall be submitted to~~
208 ~~the Internet portal in the amount determined under Subsection (2)(b); and~~

209 ~~[(ii) (B) how the Internet portal shall distribute premiums to the [insurers] carriers~~
210 ~~selected by qualified individuals within an employer group based on each individual's health~~
211 ~~risk factor determined in accordance with the plan[-];~~

212 ~~[(d) The plan adopted under Subsection (2)(a) shall outline]~~

213 (b) for the defined contribution arrangement market and for any health benefit plan

214 offered to a small employer group on or after January 1, 2011, including a plan offered to a
 215 small employer group not participating in a defined contribution arrangement:

216 (i) underwriting mechanisms:

217 (A) consistent with the federal Health Insurance Portability and Accountability Act:

218 and

219 (B) necessary to protect carriers from adverse selection;

220 (ii) how premium rates for an enrollee are calculated, including:

221 (A) calculation of an initial rate for an enrollee based on:

222 (I) standardized age bands submitted by carriers; and

223 (II) wellness incentives for the individual as permitted by federal law; and

224 (B) calculation of a group risk factor to be applied to the initial age rate based on the

225 health conditions of all qualified individuals in the same employer group and, for small

226 employer groups, in accordance with Sections 31A-30-105 and 31A-30-106;

227 (iii) a mechanism for adjusting risk [~~between insurers~~] among carriers that:

228 [(i)] (A) identifies health [~~care~~] conditions subject to risk adjustment;

229 [(ii)] (B) establishes an adjustment amount for each identified health [~~care~~] condition;

230 [(iii)] (C) determines the extent to which [~~an insurer~~] a carrier has more or [~~less~~] fewer

231 individuals with an identified health condition than would be expected; and

232 [(iv) ~~computes~~] (D) calculates all risk adjustments.

233 [(e) ~~The board may amend the plan if necessary to:~~]

234 [(i) ~~maintain the solvency of the defined contribution market;~~]

235 [(ii) ~~mitigate significant issues of risk selection; or~~]

236 [(iii) ~~improve the administration of the risk adjuster mechanism.~~]

237 Section 7. Section **31A-42-203** is amended to read:

238 **31A-42-203. Powers and duties of Board -- Budget.**

239 [(1) ~~The board shall have the power to:~~]

240 (1) The Utah Statewide Risk Adjuster Board may:

241 (a) enter into contracts to carry out the provisions and purposes of this chapter,

242 including, with the approval of the commissioner, contracts with persons or other organizations

243 for the performance of administrative functions; and

244 (b) sue or be sued, including taking legal action necessary to implement and enforce

245 ~~[the plan for risk adjustment adopted pursuant to this chapter; and]~~ rules adopted under Section
246 31A-42-204.

247 ~~[(c) establish appropriate rate adjustments, underwriting policies, and other actuarial~~
248 ~~functions appropriate to the operation]~~

249 (2) In addition to the requirements of Section 31A-42-202, the Utah Statewide Risk
250 Adjuster Board shall:

251 (a) as necessary, submit to the commissioner proposed amendments to the proposed
252 plan of operation under Subsection 31A-42-202(1), and to rules adopted by the commissioner
253 under Section 31A-42-204, that:

254 (i) maintain the proper functioning and solvency of the defined contribution
255 arrangement market [in accordance with Section 31A-42-202:] and promote the viability of
256 health benefit plans offered to small employer groups on or after January 1, 2011, including
257 amendments affecting the calculation of rates, underwriting, and other actuarial functions;

258 (ii) mitigate significant issues of risk selection; or

259 (iii) improve how the Utah Statewide Risk Adjuster adjusts risk;

260 ~~[(2)(a) The board shall]~~ (b) prepare and submit an annual report to the department for
261 inclusion in the department's annual market report, which shall include:

262 (i) the expenses [of administration of the risk adjuster for the defined contribution
263 arrangement market] incurred by the board and by the Utah Statewide Risk Adjuster;

264 (ii) a description of the types of policies sold in the defined contribution arrangement
265 market;

266 (iii) the number of insured lives in the defined contribution arrangement market; [and]

267 (iv) the number of insured lives in health benefit plans that do not include state
268 mandates[-]; and

269 ~~[(b) The budget for operation of the risk adjuster is subject to the approval of the~~
270 ~~board.]~~

271 ~~[(c) The administrative budget of the board and the commissioner under this chapter~~
272 ~~shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is~~
273 ~~subject to review and approval by the Legislature.]~~

274 ~~[(3) The board shall]~~

275 (v) the effect of risk adjustment rules adopted under Section 31A-42-204 on:

276 (A) plans offered in the defined contribution arrangement market; and
 277 (B) plans offered to a small employer group on or after January 1, 2001; and
 278 (c) beginning in 2010 and ending in 2012, report to the Health Reform Task Force and
 279 to the Legislative Management Committee prior to October 1[, 2009 and again prior to October
 280 1, 2010] of each year regarding:

281 ~~[(a)] (i) the board's progress in;~~
 282 (A) developing the plan required [by this chapter; and] under Section 31A-42-202;
 283 ~~[(b) the board's progress in:]~~
 284 ~~[(i)] (B) expanding choice of plans in the defined contribution arrangement market;~~
 285 and
 286 ~~[(ii)] (C) expanding access to the defined contribution arrangement market in the~~
 287 Internet portal for large employer groups.

288 (3) The administrative budget of the board and the commissioner under this chapter
 289 shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is
 290 subject to review and approval by the Legislature.

291 Section 8. Section **31A-42-204** is amended to read:

292 **31A-42-204. Powers and duties of commissioner -- Administrative rulemaking**
 293 **authority.**

294 (1) The commissioner shall, after notice and hearing, ~~[approve the]~~ adopt the Utah
 295 Statewide Risk Adjuster Board's proposed plan of operation, and any amendment thereto,
 296 through administrative rulemaking if the commissioner determines that the plan[:] or
 297 amendment:

298 ~~[(a) is consistent with this chapter; and]~~
 299 (a) meets the requirements of Sections 31A-42-202 and 31A-42-203; and
 300 (b) [is] ensures a fair and reasonable administration of [the] risk [adjuster] by the Utah
 301 Statewide Risk Adjuster.

302 (2) The plan, and any amendment thereto, shall be effective ~~[upon the]~~ only after
 303 adoption [of] by the commissioner as an administrative [rules by the commissioner] rule in
 304 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

305 (3) ~~[If the board fails to submit a proposed plan of operation by January 1, 2010, or any~~
 306 ~~time thereafter fails to submit proposed amendments to the plan of operation within a~~

307 ~~reasonable time after requested by the commissioner, the]~~ The commissioner shall, after notice
308 and hearing, adopt such rules as necessary to effectuate the provisions of this chapter[-], if:
309 (a) the board fails to submit to the commissioner a proposed plan of operation by
310 January 1, 2010, addressing each of the elements specified in Section 31A-42-202;
311 (b) the board fails to submit to the commissioner by September 1, 2010, proposed
312 amendments to rules adopted under this section to implement changes made to this chapter
313 during the 2010 Annual General Session of the Legislature; or
314 (c) the board fails to submit a proposed amendment to rules adopted under this section
315 within a reasonable period, when requested to do so by the commissioner.
316 (4) Rules promulgated by the commissioner shall continue in force until modified by
317 the commissioner, by rule, or until superseded by a subsequent plan of operation, or an
318 amendment to the plan of operation, submitted by the board [~~and~~], approved by the
319 commissioner[-], and implemented by rule.
320 [~~(5) The commissioner may designate an executive secretary from the department to~~
321 ~~provide administrative assistance to the board in carrying out its responsibilities.]~~

Legislative Review Note
as of 1-22-10 1:23 PM

Office of Legislative Research and General Counsel

H.B. 111 - Small Group Health Insurance - Statewide Risk Adjustment

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will require an on-going General Fund appropriation of \$13,000 for FY 2011 and FY 2012 for additional staff support from the Department of Insurance to the Utah Statewide Risk Adjuster Board.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$13,000	\$13,000	\$0	\$0	\$0
Total	\$0	\$13,000	\$13,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Business and Individuals may be impacted due to the proposed change in statute.