

## Part 2 Creation of Risk Adjuster Mechanism

### **31A-42-201 Creation of risk adjuster mechanism -- Board of directors -- Appointment -- Terms -- Quorum -- Plan preparation.**

- (1) There is created the "Utah Defined Contribution Risk Adjuster," a nonprofit entity within the department.
- (2)
  - (a) The risk adjuster is under the direction of a board of directors composed of up to nine members described in Subsection (2)(b).
  - (b) The board of directors shall consist of:
    - (i) the following directors appointed by the governor with the consent of the Senate:
      - (A) at least three, but up to five, directors with actuarial experience who represent insurers:
        - (I) that are participating or have committed to participate in the defined contribution arrangement market in the state; and
        - (II) including at least one and up to two directors who represent an insurer that has a small percentage of lives in the defined contribution market;
      - (B) one director who represents either an individual employee or employer; and
      - (C) one director who represents the Office of Consumer Health Services within the Governor's Office of Economic Development;
    - (ii) one director representing the Public Employees' Benefit and Insurance Program with actuarial experience, appointed by the director of the Public Employees' Benefit and Insurance Program; and
    - (iii) the commissioner, or a representative of the commissioner who:
      - (A) is appointed by the commissioner; and
      - (B) has actuarial experience.
  - (c) The commissioner, or a representative appointed by the commissioner may vote only in the event of a tie vote.
- (3)
  - (a) Except as required by Subsection (3)(b), as terms of current board members appointed by the governor expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
  - (c) Notwithstanding the requirements of Subsection (3)(a), a board member shall continue to serve until the board member is reappointed or replaced by another individual in accordance with this section.
- (4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment was made.
- (5)
  - (a) A board member who is not a government employee may not receive compensation or benefits for the board member's services.
  - (b) A state government member who is a board member because of the board member's state government position may not receive per diem or expenses for the member's service.
- (6) The board shall elect annually a chair and vice chair from its membership.
- (7) A majority of the board members is a quorum for the transaction of business.

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

Amended by Chapter 10, 2010 General Session

Amended by Chapter 68, 2010 General Session

**31A-42-202 Contents of plan.**

(1) The board shall submit a plan of operation for the risk adjuster to the commissioner. The plan shall:

- (a) establish the methodology for implementing:
  - (i) Subsection (2) for the defined contribution arrangement market established under Chapter 30, Part 2, Defined Contribution Arrangements; and
  - (ii) the participation of small employer group defined contribution arrangement health benefit plans;
- (b) establish regular times and places for meetings of the board;
- (c) establish procedures for keeping records of all financial transactions and for sending annual fiscal reports to the commissioner;
- (d) contain additional provisions necessary and proper for the execution of the powers and duties of the risk adjuster; and
- (e) establish procedures in compliance with Title 63A, Utah Administrative Services Code, to pay for administrative expenses incurred.

(2)

- (a) The plan adopted by the board for the defined contribution arrangement market shall include:
  - (i) parameters an employer may use to designate eligible employees for the defined contribution arrangement market; and
  - (ii) underwriting mechanisms and employer eligibility guidelines:
    - (A) consistent with the federal Health Insurance Portability and Accountability Act; and
    - (B) necessary to protect insurance carriers from adverse selection in the defined contribution market.
- (b) The plan required by Subsection (2)(a) shall outline how premium rates for a qualified individual in the defined contribution arrangement market are determined, including:
  - (i) the identification of an initial rate for a qualified individual based on:
    - (A) standardized age bands submitted by participating insurers; and
    - (B) wellness incentives for the individual as permitted by federal law; and
  - (ii) the identification of a group risk factor to be applied to the initial age rate of a qualified individual based on the health conditions of all qualified individuals in the same employer group and, for small employers, in accordance with Sections 31A-30-105 and 31A-30-106.1.
- (c) The plan adopted under Subsection (2)(a) for the defined contribution arrangement market shall outline how:
  - (i) premium contributions for qualified individuals shall be submitted to the Health Insurance Exchange in the amount determined under Subsection (2)(b); and
  - (ii) the Health Insurance Exchange shall distribute premiums to the insurers selected by qualified individuals within an employer group based on each individual's rating factor determined in accordance with the plan.
- (d) The plan adopted under Subsection (2)(a) shall outline a mechanism for adjusting risk between defined contribution arrangement market insurers that:
  - (i) identifies health care conditions subject to risk adjustment;
  - (ii) establishes an adjustment amount for each identified health care condition;

- (iii) determines the extent to which an insurer has more or less individuals with an identified health condition than would be expected; and
- (iv) computes all risk adjustments.
- (e) The board may amend the plan if necessary to:
  - (i) maintain the proper functioning and solvency of the defined contribution arrangement market and the risk adjuster mechanism;
  - (ii) mitigate significant issues of risk selection; or
  - (iii) improve the administration of the risk adjuster mechanism.
- (3) The board shall establish a mechanism in which the defined contribution arrangement market participating carriers shall submit their plan base rates, rating factors, and premiums to the commissioner for an actuarial review under Section 31A-30-115 before the publication of the premium rates on the Health Insurance Exchange.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

### **31A-42-203 Powers and duties of board.**

- (1) The board shall have the power to:
  - (a) enter into contracts to carry out the provisions and purposes of this chapter, including, with the approval of the commissioner, contracts with persons or other organizations for the performance of administrative functions;
  - (b) sue or be sued, including taking legal action necessary to implement and enforce the plan for risk adjustment adopted pursuant to this chapter; and
  - (c) establish appropriate rate adjustments, underwriting policies, and other actuarial functions appropriate to the operation of the defined contribution arrangement market in accordance with Section 31A-42-202.
- (2)
  - (a) The board shall prepare and submit an annual report no later than July 1, each year to the department for inclusion in the department's annual market report, which shall include:
    - (i) the expenses of administration of the risk adjuster for the defined contribution arrangement market;
    - (ii) a description of the types of policies sold in the defined contribution arrangement market;
    - (iii) the number of insured lives in the defined contribution arrangement market; and
    - (iv) the number of insured lives in health benefit plans that do not include state mandates.
  - (b) The budget for operation of the risk adjuster is subject to the approval of the board.
  - (c) The administrative budget of the board and the commissioner under this chapter shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is subject to review and approval by the Legislature.

Amended by Chapter 253, 2012 General Session

### **31A-42-204 Powers of commissioner.**

- (1) The commissioner shall, after notice and hearing, approve the plan of operation if the commissioner determines that the plan:
  - (a) is consistent with this chapter; and
  - (b) is a fair and reasonable administration of the risk adjuster.
- (2) The plan shall be effective upon the adoption of administrative rules by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (3) If the board fails to submit a proposed plan of operation by January 1, 2010, or any time thereafter fails to submit proposed amendments to the plan of operation within a reasonable time after requested by the commissioner, the commissioner shall, after notice and hearing, adopt such rules as necessary to effectuate the provisions of this chapter.
- (4) Rules promulgated by the commissioner shall continue in force until modified by the commissioner or until superseded by a subsequent plan of operation submitted by the board and approved by the commissioner.
- (5) The commissioner may designate an executive secretary from the department to provide administrative assistance to the board in carrying out its responsibilities.

Enacted by Chapter 12, 2009 General Session