

Effective 7/1/2024

63A-5b-607 Health insurance requirements -- Penalties.

(1) As used in this section:

- (a) "Aggregate amount" means the dollar sum of all contracts, change orders, and modifications for a single project.
- (b) "Change order" means the same as that term is defined in Section 63G-6a-103.
- (c) "Eligible employee" means an employee, as defined in Section 34A-2-104, who:
 - (i) works at least 30 hours per calendar week; and
 - (ii) meets the employer eligibility waiting period for qualified health insurance coverage provided by the employer.
- (d) "Health benefit plan" means:
 - (i) the same as that term is defined in Section 31A-1-301; or
 - (ii) an employee welfare benefit plan:
 - (A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;
 - (B) for an employer with 100 or more employees; and
 - (C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.
- (e) "Qualified health insurance coverage" means the same as that term is defined in Section 26B-3-909.
- (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
- (g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.

(2) Except as provided in Subsection (3), the requirements of this section apply to:

- (a) a contractor of a design or construction contract with the division if the prime contract is in an aggregate amount of \$2,000,000 or more; and
- (b) a subcontractor of a contractor of a design or construction contract with the division if the subcontract is in an aggregate amount of \$1,000,000 or more.

(3) The requirements of this section do not apply to a contractor or subcontractor if:

- (a) the application of this section jeopardizes the division's receipt of federal funds;
- (b) the contract is a sole source contract, as defined in Section 63G-6a-103; or
- (c) the contract is the result of an emergency procurement.

(4) A person who intentionally uses a change order, contract modification, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5)

- (a) A contractor that is subject to the requirements of this section shall:
 - (i) make and maintain an offer of qualified health coverage for the contractor's eligible employees and the eligible employees' dependents; and
 - (ii) submit to the director a written statement demonstrating that the contractor is in compliance with Subsection (5)(a)(i).
- (b) A statement under Subsection (5)(a)(ii):
 - (i) shall be from:
 - (A) an actuary selected by the contractor or the contractor's insurer;
 - (B) an underwriter who is responsible for developing the employer group's premium rates; or
 - (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and
 - (ii) may not be created more than one year before the day on which the contractor submits the statement to the director.

- (c)
 - (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.
 - (ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:
 - (A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and
 - (B) the division.
- (6)
 - (a) A contractor that is subject to the requirements of this section shall:
 - (i) ensure that each contract the contractor enters with a subcontractor that is subject to the requirements of this section requires the subcontractor to obtain and maintain an offer of qualified health coverage for the subcontractor's eligible employees and the eligible employees' dependents during the duration of the subcontract; and
 - (ii) obtain from a subcontractor referred to in Subsection (6)(a)(i) a written statement demonstrating that the subcontractor offers qualified health coverage to eligible employees and eligible employees' dependents.
 - (b) A statement under Subsection (6)(a)(ii):
 - (i) shall be from:
 - (A) an actuary selected by the subcontractor or the subcontractor's insurer;
 - (B) an underwriter who is responsible for developing the employer group's premium rates; or
 - (C) if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and
 - (ii) may not be created more than one year before the day on which the contractor obtains the statement from the subcontractor.
- (7)
 - (a)
 - (i) A contractor that fails to maintain an offer of qualified health coverage during the duration of the contract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage as required in this section.
 - (b)
 - (i) A subcontractor that fails to obtain and maintain an offer of qualified health coverage during the duration of the subcontract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage as required in this section.
- (8) The division shall make rules:
 - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (b) in coordination with:
 - (i) the Department of Environmental Quality in accordance with Section 19-1-206;

- (ii) the Department of Natural Resources in accordance with Section 79-2-404;
 - (iii) a public transit district in accordance with Section 17B-2a-818.5;
 - (iv) the State Capitol Preservation Board in accordance with Section 63O-2-403;
 - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
 - (vi) the Legislature's Rules Review and General Oversight Committee created under Section 36-35-102; and
- (c) that establish:
- (i) the requirements and procedures for a contractor and a subcontractor to demonstrate compliance with this section, including:
 - (A) a provision that a contractor or subcontractor's compliance with this section is subject to an audit by the division or the Office of the Legislative Auditor General;
 - (B) a provision that a contractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (5); and
 - (C) a provision that a subcontractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (6);
 - (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
 - (A) a three-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the first violation;
 - (B) a six-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the second violation;
 - (C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
 - (D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for eligible employees and dependents of eligible employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and
 - (iii) a website for the department to post the commercially equivalent benchmark for the qualified health coverage that is provided by the Department of Health and Human Services in accordance with Subsection 26B-3-909(2).
- (9) During the duration of a contract, the division may perform an audit to verify a contractor or subcontractor's compliance with this section.
- (10)
- (a) Upon the division's request, a contractor or subcontractor shall provide the division:
 - (i) a signed actuarial certification that the coverage the contractor or subcontractor offers is qualified health coverage; or
 - (ii) all relevant documents and information necessary for the division to determine compliance with this section.
 - (b) If a contractor or subcontractor provides the documents and information described in Subsection (10)(a)(i), the Insurance Department shall assist the division in determining if the coverage the contractor or subcontractor offers is qualified health coverage.
- (11)
- (a)
 - (i) In addition to the penalties imposed under Subsection (7), a contractor or subcontractor that intentionally violates the provisions of this section is liable to an eligible employee for health care costs that would have been covered by qualified health coverage.
 - (ii) An employer has an affirmative defense to a cause of action under Subsection (11)(a)(i) if:

- (A) the employer relied in good faith on a written statement described in Subsection (5) or (6);
or
- (B) the department determines that compliance with this section is not required under the provisions of Subsection (3).
- (b) An eligible employee has a private right of action against the employee's employer only as provided in this Subsection (11).
- (12) The director shall cause money collected from the imposition and collection of a penalty under this section to be deposited into the Medicaid Growth Reduction and Budget Stabilization Account created by Section 63J-1-315.
- (13) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:
 - (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:
 - (i) Section 63G-6a-1602; or
 - (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
 - (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.
- (14) An employer's waiting period for an employee to become eligible for qualified health coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.
- (15) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):
 - (a) subject to Subsection (11)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;
 - (b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and
 - (c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Amended by Chapter 439, 2024 General Session