

**Effective 7/1/2024**

**63O-2-403 Contracting power of executive director -- Health insurance coverage.**

(1) As used in this section:

- (a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.
- (b) "Change order" means the same as that term is defined in Section 63G-6a-103.
- (c) "Employee" means, as defined in Section 34A-2-104, an "employee," "worker," or "operative" who:
  - (i) works at least 30 hours per calendar week; and
  - (ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first of the calendar month following 60 days after the day on which the individual is hired.
- (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 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 entered into by the board, or on behalf of the board, on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than \$2,000,000; and
- (b) a subcontractor of a contractor of a design or construction contract entered into by the board, or on behalf of the board, on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

(3) The requirements of this section do not apply to a contractor or subcontractor described in Subsection (2) if:

- (a) the application of this section jeopardizes the receipt of federal funds;
- (b) the contract is a sole source contract; or
- (c) the contract is an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5)

- (a) A contractor subject to the requirements of this section shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the executive director a written statement that:
  - (i) the contractor offers qualified health coverage that complies with Section 26B-3-909;
  - (ii) is 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
- (iii) was created within one year before the day on which the statement is submitted.
- (b)
  - (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by the administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the health benefit plan's actuarial value meets 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 the administrator, as described in Subsection (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and
    - (B) the executive director.
- (c) A contractor that is subject to the requirements of this section shall:
  - (i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and
  - (ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:
    - (A) the subcontractor offers qualified health coverage that complies with Section 26B-3-909;
    - (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an underwriter who is responsible for developing the employer group's premium rates, or if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and
- (C) was created within one year before the day on which the contractor obtains the statement.
- (d)
  - (i)
    - (A) A contractor that fails to maintain an offer of qualified health coverage as described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).
    - (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).
  - (ii)
    - (A) A subcontractor that fails to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
    - (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage described in Subsection (5)(a).
- (6) The department 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) the Division of Facilities Construction and Management in accordance with Section 63A-5b-607;
- (iv) a public transit district in accordance with Section 17B-2a-818.5;
- (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 in Section 36-35-102; and
- (c) that establish:
  - (i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:
    - (A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;
    - (B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and
    - (C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);
  - (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 future contracts with the state upon the first violation;
    - (B) a six-month suspension of the contractor or subcontractor from entering into future contracts 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 employees and dependents of employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and
  - (iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by the Department of Health and Human Services, in accordance with Subsection 26B-3-909(2).
- (7)
  - (a)
    - (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the 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 (7)(a)(i) if:
      - (A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or
      - (B) the department determines that compliance with this section is not required under the provisions of Subsection (3).
  - (b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).
- (8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Growth Reduction and Budget Stabilization Account created in Section 63J-1-315.
- (9) 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.
- (10) An administrator, including the 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 (10)(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 425, 2024 General Session