

Effective 3/17/2016

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

- (1) For purposes of this section:
 - (a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 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 day of the calendar month following 60 days from the date of hire.
 - (b) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
 - (c) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.
 - (d) "Subcontractor" means the same as that term is defined in Section 63A-5-208.
- (2)
 - (a) Except as provided in Subsection (3), this section applies a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).
 - (b)
 - (i) A prime contractor is subject to this section if the prime contract is in the amount of \$2,000,000 or greater at the original execution of the contract.
 - (ii) A subcontractor is subject to this section if a subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.
- (3) This section does not apply to contracts entered into by the department or a division, board, or council of the department if:
 - (a) the application of this section jeopardizes the receipt of federal funds;
 - (b) the contract or agreement is between:
 - (i) the department or a division, board, or council of the department; and
 - (ii)
 - (A) another agency of the state;
 - (B) the federal government;
 - (C) another state;
 - (D) an interstate agency;
 - (E) a political subdivision of this state; or
 - (F) a political subdivision of another state; or
 - (c) the contract or agreement is:
 - (i) for the purpose of disbursing grants or loans authorized by statute;
 - (ii) a sole source contract; or
 - (iii) an emergency procurement.
- (4)
 - (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).
 - (b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.
- (5)
 - (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

- (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall:
 - (i) place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependants during the duration of the subcontract; and
 - (ii) certify to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.
- (c)
 - (i)
 - (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
 - (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
 - (ii)
 - (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract 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 meet the requirements of Subsection (5)(a).
- (6) The department shall adopt administrative 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) a public transit district in accordance with Section 17B-2a-818.5;
 - (iii) the State Building Board in accordance with Section 63A-5-205;
 - (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
 - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
 - (vi) the Legislature's Administrative Rules Review Committee; and
 - (c) that establish:
 - (i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department that shall include:
 - (A) that a contractor shall demonstrate compliance with Subsection (5)(a) or (b) at the time of the execution of each initial contract described in Subsection (2)(b);
 - (B) that the contractor's compliance is subject to an audit by the department or the Office of the Legislative Auditor General; and
 - (C) that the actuarially equivalent determination required for qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency, which is no more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates;
 - (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 insurance coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health insurance 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 insurance coverage identified in Subsection (1)(c), provided by the Department of Health, in accordance with Subsection 26-40-115(2).
- (7)
- (a)
 - (i) In addition to the penalties imposed under Subsection (6), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance 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 of actuarial equivalency provided by:
 - (I) an actuary; or
 - (II) an underwriter who is responsible for developing the employer group's premium rates; or
 - (B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).
 - (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 Restricted Account created in Section 26-18-402.
- (9) The failure of a contractor or subcontractor to provide qualified health insurance 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 Section 63G-6a-1602 or 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.

Amended by Chapter 20, 2016 General Session
Amended by Chapter 355, 2016 General Session