1 # AMENDMENTS TO HEALTH INSURANCE
2 # COVERAGE IN STATE CONTRACTS

3 2010 GENERAL SESSION
4 STATE OF UTAH
5 **Chief Sponsor: James A. Dunnigan**
6 Senate Sponsor: Gene Davis
7

8 **LONG TITLE**
9 **Committee Note:**
10 The Health System Reform Task Force recommended this bill.
11 **General Description:**
12 This bill amends provisions related to the requirement that contractors with certain state
13 entities must provide qualified health insurance to their employees and the dependents
14 of the employees who work or reside in the state.
15 **Highlighted Provisions:**
16 This bill:
17 ▸ clarifies that the application of a waiting period for health insurance may not exceed
18 the first of the month following 90 days of the date of hire;
19 ▸ clarifies that the qualified health insurance coverage must be offered to employees
20 and dependents who work or reside in the state;
21 ▸ clarifies that the qualified health insurance coverage that must be offered is a
22 minimum standard and an employer may offer greater coverage;
23 ▸ amends the definition of qualified health insurance coverage to clarify the standards;
24 ▸ amends the enforcement provisions to provide protections for good faith
25 compliance; and
26 ▸ clarifies how an employer offering a defined contribution arrangement may comply
27 with state contract requirements.

28 **Monies Appropriated in this Bill:**
29 None
30 **Other Special Clauses:**
31 None
32 **Utah Code Sections Affected:**
33 AMENDS:
34 **17B-2a-818.5**, as enacted by Laws of Utah 2009, Chapter 13
35 **19-1-206**, as enacted by Laws of Utah 2009, Chapter 13
36 **63A-5-205**, as last amended by Laws of Utah 2009, Chapter 13
37 **63C-9-403**, as enacted by Laws of Utah 2009, Chapter 13
38 **72-6-107.5**, as enacted by Laws of Utah 2009, Chapter 13
39 **79-2-404**, as enacted by Laws of Utah 2009, Chapter 13
40 ENACTS:
41 **31A-30-209**, Utah Code Annotated 1953
42

43 *Be it enacted by the Legislature of the state of Utah:*
44 Section 1. Section **17B-2a-818.5** is amended to read:
45 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
46 **coverage.**
47 (1) For purposes of this section:
48 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
49 34A-2-104 who:
50 (i) works at least 30 hours per calendar week; and
51 (ii) meets employer eligibility waiting requirements for health care insurance which
52 may not exceed the first day of the calendar month following 90 days from the date of hire.
53 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
54 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
55 the contract is entered into or renewed:
56 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~
57 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and~~]
58 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~

59 the dependents of the employee;]
60 [(ii) (A) is a federally qualified high deductible health plan that has:]
61 [(I) the lowest deductible permitted for a federally qualified high deductible health
62 plan; and]
63 [(II) an out of pocket maximum that does not exceed three times the amount of the
64 annual deductible; and]
65 [(B) under which the employer pays 75% of the premium for the employee and the
66 dependents of the employee; or]
67 [(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
68 determined under Subsection (1)(c)(i); and]
69 [(B) under which the employer pays at least 75% of the premium of the employee and
70 the dependents of the employee.]
71 (i) a health benefit plan and employer contribution level with a combined actuarial
72 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
73 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
74 a contribution level of 50% of the premium for the employee and the dependents of the
75 employee who reside or work in the state, in which:
76 (A) the employer pays at least 50% of the premium for the employee and the
77 dependents of the employee who reside or work in the state; and
78 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
79 (I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket
80 maximum based on income levels:
81 (Aa) the deductible is $750 per individual and $2,250 per family; and
82 (Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;
83 (II) dental coverage is not required; and
84 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
85 apply; or
86 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
87 deductible that is either:
88 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
89 or

90 (II) a deductible that is higher than the lowest deductible permitted for a federally
91 qualified high deductible health plan, but includes an employer contribution to a health savings
92 account in a dollar amount at least equal to the dollar amount difference between the lowest
93 deductible permitted for a federally qualified high deductible plan and the deductible for the
94 employer offered federally qualified high deductible plan;
95 (B) an out-of-pocket maximum that does not exceed three times the amount of the
96 annual deductible; and
97 (C) under which the employer pays 75% of the premium for the employee and the
98 dependents of the employee who work or reside in the state.
99 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
100 (2) Except as provided in Subsection (3), this section applies to all contracts entered
101 into by the public transit district on or after July 1, 2009, if:
102 (a) the contract is for design or construction; and
103 (b) (i) the prime contract is in the amount of $1,500,000 or greater; or
104 (ii) a subcontract is in the amount of $750,000 or greater.
105 (3) This section does not apply if:
106 (a) the application of this section jeopardizes the receipt of federal funds;
107 (b) the contract is a sole source contract; or
108 (c) the contract is an emergency procurement.
109 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
110 or a modification to a contract, when the contract does not meet the initial threshold required
111 by Subsection (2).
112 (b) A person who intentionally uses change orders or contract modifications to
113 circumvent the requirements of Subsection (2) is guilty of an infraction.
114 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
115 district that the contractor has and will maintain an offer of qualified health insurance coverage
116 for the contractor's employees and the employee's dependents during the duration of the
117 contract.
118 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
119 shall demonstrate to the public transit district that the subcontractor has and will maintain an
120 offer of qualified health insurance coverage for the subcontractor's employees and the

121 employee's dependents during the duration of the contract.
122 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
123 the duration of the contract is subject to penalties in accordance with [~~administrative rules~~] an
124 ordinance adopted by the public transit district under Subsection (6).
125 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
126 requirements of Subsection (5)(b).
127 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
128 the duration of the contract is subject to penalties in accordance with [~~administrative rules~~] an
129 ordinance adopted by the public transit district under Subsection (6).
130 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
131 requirements of Subsection (5)(a).
132 (6) The public transit district shall adopt [~~administrative rules~~] ordinances:
133 [~~(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~]
134 [~~(b)~~] (a) in coordination with:
135 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
136 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
137 (iii) the State Building Board in accordance with Section 63A-5-205;
138 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
139 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
140 [~~(vi) the Legislature's Administrative Rules Review Committee; and~~]
141 [~~(c)~~] (b) which establish:
142 (i) the requirements and procedures a contractor must follow to demonstrate to the
143 public transit district compliance with this section which shall include:
144 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
145 (b) more than twice in any 12-month period; and
146 (B) that the actuarially equivalent determination required in Subsection (1) is met by
147 the contractor if the contractor provides the department or division with a written statement of
148 actuarial equivalency from either:
149 (I) the Utah Insurance Department; [~~or~~]
150 (II) an actuary selected by the contractor or the contractor's insurer; [~~and~~] or
151 (III) an underwriter who is responsible for developing the employer group's premium

152 rates;
153 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
154 violates the provisions of this section, which may include:
155 (A) a three-month suspension of the contractor or subcontractor from entering into
156 future contracts with the public transit district upon the first violation;
157 (B) a six-month suspension of the contractor or subcontractor from entering into future
158 contracts with the public transit district upon the second violation;
159 (C) an action for debarment of the contractor or subcontractor in accordance with
160 Section 63G-6-804 upon the third or subsequent violation; and
161 (D) monetary penalties which may not exceed 50% of the amount necessary to
162 purchase qualified health insurance coverage for employees and dependents of employees of
163 the contractor or subcontractor who were not offered qualified health insurance coverage
164 during the duration of the contract[.]; and
165 (iii) a website on which the district shall post the benchmark for the qualified health
166 insurance coverage identified in Subsection (1)(c)(i).
167 (7) (a) (i) In addition to the penalties imposed under Subsection (6)[(c)](b)(ii), a
168 contractor or subcontractor who intentionally violates the provisions of this section shall be
169 liable to the employee for health care costs [not covered by insurance.] that would have been
170 covered by qualified health insurance coverage.
171 (ii) An employer has an affirmative defense to a cause of action under Subsection
172 (7)(a)(i) if:
173 (A) the employer relied in good faith on a written statement of actuarial equivalency
174 provided by an Ĥ→ **:**
174a **(I)** ←Ĥ actuary; or
174b Ĥ→ **(II) underwriter who is responsible for developing the employer group's premium**
174c **rates; or** ←Ĥ
175 (B) a department or division determines that compliance with this section is not
176 required under the provisions of Subsection (3) or (4).
177 (b) An employee has a private right of action only against the employee's employer to
178 enforce the provisions of this Subsection (7).
179 (8) Any penalties imposed and collected under this section shall be deposited into the
180 Medicaid Restricted Account created in Section 26-18-402.
181 (9) The failure of a contractor or subcontractor to provide qualified health insurance
182 coverage as required by this section:

183 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
184 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
185 Legal and Contractual Remedies; and
186 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
187 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
188 or construction.
189 Section 2. Section **19-1-206** is amended to read:
190 **19-1-206. Contracting powers of department -- Health insurance coverage.**
191 (1) For purposes of this section:
192 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
193 34A-2-104 who:
194 (i) works at least 30 hours per calendar week; and
195 (ii) meets employer eligibility waiting requirements for health care insurance which
196 may not exceed the first day of the calendar month following 90 days from the date of hire.
197 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
198 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
199 the contract is entered into or renewed:
200 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~
201 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and~~]
202 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~
203 ~~the dependents of the employee;~~]
204 [~~(ii) (A) is a federally qualified high deductible health plan that has:~~]
205 [~~(I) the lowest deductible permitted for a federally qualified high deductible health~~
206 ~~plan; and~~]
207 [~~(II) an out of pocket maximum that does not exceed three times the amount of the~~
208 ~~annual deductible; and~~]
209 [~~(B) under which the employer pays 75% of the premium for the employee and the~~
210 ~~dependents of the employee; or~~]
211 [~~(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
212 ~~determined under Subsection (1)(c)(i); and~~]
213 [~~(B) under which the employer pays at least 75% of the premium of the employee and~~

214 ~~the dependents of the employee.~~]
215 (i) a health benefit plan and employer contribution level with a combined actuarial
216 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
217 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
218 a contribution level of 50% of the premium for the employee and the dependents of the
219 employee who reside or work in the state, in which:
220 (A) the employer pays at least 50% of the premium for the employee and the
221 dependents of the employee who reside or work in the state; and
222 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
223 (I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket
224 maximum based on income levels:
225 (Aa) the deductible is $750 per individual and $2,250 per family; and
226 (Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;
227 (II) dental coverage is not required; and
228 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
229 apply; or
230 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
231 deductible that is either:
232 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
233 or
234 (II) a deductible that is higher than the lowest deductible permitted for a federally
235 qualified high deductible health plan, but includes an employer contribution to a health savings
236 account in a dollar amount at least equal to the dollar amount difference between the lowest
237 deductible permitted for a federally qualified high deductible plan and the deductible for the
238 employer offered federally qualified high deductible plan;
239 (B) an out-of-pocket maximum that does not exceed three times the amount of the
240 annual deductible; and
241 (C) under which the employer pays 75% of the premium for the employee and the
242 dependents of the employee who work or reside in the state.
243 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
244 (2) Except as provided in Subsection (3), this section applies to all contracts entered

245 into by or delegated to the department or a division or board of the department on or after July
246 1, 2009, if:
247 (a) the contract is for design or construction; and
248 (b) (i) the prime contract is in the amount of $1,500,000 or greater; or
249 (ii) a subcontract is in the amount of $750,000 or greater.
250 (3) This section does not apply to contracts entered into by the department or a division
251 or board of the department if:
252 (a) the application of this section jeopardizes the receipt of federal funds;
253 (b) the contract or agreement is between:
254 (i) the department or a division or board of the department; and
255 (ii) (A) another agency of the state;
256 (B) the federal government;
257 (C) another state;
258 (D) an interstate agency;
259 (E) a political subdivision of this state; or
260 (F) a political subdivision of another state;
261 (c) the executive director determines that applying the requirements of this section to a
262 particular contract interferes with the effective response to an immediate health and safety
263 threat from the environment; or
264 (d) the contract is:
265 (i) a sole source contract; or
266 (ii) an emergency procurement.
267 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
268 or a modification to a contract, when the contract does not meet the initial threshold required
269 by Subsection (2).
270 (b) A person who intentionally uses change orders or contract modifications to
271 circumvent the requirements of Subsection (2) is guilty of an infraction.
272 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
273 director that the contractor has and will maintain an offer of qualified health insurance
274 coverage for the contractor's employees and the employees' dependents during the duration of
275 the contract.

276 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
277 demonstrate to the executive director that the subcontractor has and will maintain an offer of
278 qualified health insurance coverage for the subcontractor's employees and the employees'
279 dependents during the duration of the contract.
280 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
281 of the contract is subject to penalties in accordance with administrative rules adopted by the
282 department under Subsection (6).
283 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
284 requirements of Subsection (5)(b).
285 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
286 the duration of the contract is subject to penalties in accordance with administrative rules
287 adopted by the department under Subsection (6).
288 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
289 requirements of Subsection (5)(a).
290 (6) The department shall adopt administrative rules:
291 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
292 (b) in coordination with:
293 (i) a public transit district in accordance with Section 17B-2a-818.5;
294 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
295 (iii) the State Building Board in accordance with Section 63A-5-205;
296 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
297 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
298 (vi) the Legislature's Administrative Rules Review Committee; and
299 (c) which establish:
300 (i) the requirements and procedures a contractor must follow to demonstrate to the
301 public transit district compliance with this section which shall include:
302 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
303 (b) more than twice in any 12-month period; and
304 (B) that the actuarially equivalent determination required in Subsection (1) is met by
305 the contractor if the contractor provides the department or division with a written statement of
306 actuarial equivalency from either:

307 (I) the Utah Insurance Department [or];
308 (II) an actuary selected by the contractor or the contractor's insurer; [and] or
309 (III) an underwriter who is responsible for developing the employer group's premium
310 rates;
311 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
312 violates the provisions of this section, which may include:
313 (A) a three-month suspension of the contractor or subcontractor from entering into
314 future contracts with the state upon the first violation;
315 (B) a six-month suspension of the contractor or subcontractor from entering into future
316 contracts with the state upon the second violation;
317 (C) an action for debarment of the contractor or subcontractor in accordance with
318 Section 63G-6-804 upon the third or subsequent violation; and
319 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
320 of the amount necessary to purchase qualified health insurance coverage for an employee and
321 the dependents of an employee of the contractor or subcontractor who was not offered qualified
322 health insurance coverage during the duration of the contract[.]; and
323 (iii) a website on which the department shall post the benchmark for the qualified
324 health insurance coverage identified in Subsection (1)(c)(i).
325 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
326 subcontractor who intentionally violates the provisions of this section shall be liable to the
327 employee for health care costs [not covered by insurance.] that would have been covered by
328 qualified health insurance coverage.
329 (ii) An employer has an affirmative defense to a cause of action under Subsection
330 (7)(a)(i) if:
331 (A) the employer relied in good faith on a written statement of actuarial equivalency
332 provided by Ĥ→ **:**
332a **(I)** ←Ĥ an actuary; or
332b Ĥ→ **(II) an underwriter who is responsible for developing the employer group's premium**
332c **rates; or** ←Ĥ
333 (B) the department determines that compliance with this section is not required under
334 the provisions of Subsection (3) or (4).
335 (b) An employee has a private right of action only against the employee's employer to
336 enforce the provisions of this Subsection (7).
337 (8) Any penalties imposed and collected under this section shall be deposited into the

338 Medicaid Restricted Account created in Section 26-18-402.
339 (9) The failure of a contractor or subcontractor to provide qualified health insurance
340 coverage as required by this section:
341 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
342 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
343 Legal and Contractual Remedies; and
344 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
345 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
346 or construction.
347 Section 3. Section **31A-30-209** is enacted to read:
348 **31A-30-209. State contract requirements -- Employer default plans.**
349 (1) This section applies to an employer who is required to offer its employees a health
350 benefit plan as a condition of qualifying for a state contract under:
351 (a) Section 17B-2a-818.5;
352 (b) Section 19-1-206;
353 (c) Subsection 63A-5-205(3);
354 (d) Section 63C-9-403;
355 (e) Section 72-6-107.5; and
356 (f) Section 79-2-404.
357 (2) An employer described in Subsection (1) shall, when selecting the default plan
358 required in Section 31A-30-204, select a default plan that is "qualified health insurance
359 coverage" as defined in the sections listed in Subsections (1)(a) through (f).
360 Section 4. Section **63A-5-205** is amended to read:
361 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
362 **coverage.**
363 (1) As used in this section:
364 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.
365 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.
366 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
367 34A-2-104 who:
368 (i) works at least 30 hours per calendar week; and

369 (ii) meets employer eligibility waiting requirements for health care insurance which
370 may not exceed the first day of the calendar month following 90 days from the date of hire.
371 (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
372 (e) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
373 the contract is entered into or renewed:
374 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~
375 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and~~]
376 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~
377 ~~the dependents of the employee;~~]
378 [~~(ii) (A) is a federally qualified high deductible health plan that has:~~]
379 [~~(I) the lowest deductible permitted for a federally qualified high deductible health~~
380 ~~plan; and~~]
381 [~~(II) an out of pocket maximum that does not exceed three times the amount of the~~
382 ~~annual deductible; and~~]
383 [~~(B) under which the employer pays 75% of the premium for the employee and the~~
384 ~~dependents of the employee; or~~]
385 [~~(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
386 ~~determined under Subsection (1)(e)(i); and~~]
387 [~~(B) under which the employer pays at least 75% of the premium of the employee and~~
388 ~~the dependents of the employee.~~]
389 (i) a health benefit plan and employer contribution level with a combined actuarial
390 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
391 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
392 a contribution level of 50% of the premium for the employee and the dependents of the
393 employee who reside or work in the state, in which:
394 (A) the employer pays at least 50% of the premium for the employee and the
395 dependents of the employee who reside or work in the state; and
396 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(e)(i):
397 (I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket
398 maximum based on income levels:
399 (Aa) the deductible is $750 per individual and $2,250 per family; and

400 (Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;
401 (II) dental coverage is not required; and
402 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
403 apply; or
404 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
405 deductible that is either:
406 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
407 or
408 (II) a deductible that is higher than the lowest deductible permitted for a federally
409 qualified high deductible health plan, but includes an employer contribution to a health savings
410 account in a dollar amount at least equal to the dollar amount difference between the lowest
411 deductible permitted for a federally qualified high deductible plan and the deductible for the
412 employer offered federally qualified high deductible plan;
413 (B) an out-of-pocket maximum that does not exceed three times the amount of the
414 annual deductible; and
415 (C) under which the employer pays 75% of the premium for the employee and the
416 dependents of the employee who work or reside in the state.
417 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
418 (2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:
419 (a) subject to Subsection (3), enter into contracts for any work or professional services
420 which the division or the State Building Board may do or have done; and
421 (b) as a condition of any contract for architectural or engineering services, prohibit the
422 architect or engineer from retaining a sales or agent engineer for the necessary design work.
423 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all
424 contracts entered into by the division or the State Building Board on or after July 1, 2009, if:
425 (i) the contract is for design or construction; and
426 (ii) (A) the prime contract is in the amount of $1,500,000 or greater; or
427 (B) a subcontract is in the amount of $750,000 or greater.
428 (b) This Subsection (3) does not apply:
429 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;
430 (ii) if the contract is a sole source contract;

431 (iii) if the contract is an emergency procurement; or
432 (iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,
433 when the contract does not meet the threshold required by Subsection (3)(a).
434 (c) A person who intentionally uses change orders or contract modifications to
435 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.
436 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
437 the contractor has and will maintain an offer of qualified health insurance coverage for the
438 contractor's employees and the employees' dependents.
439 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
440 shall demonstrate to the director that the subcontractor has and will maintain an offer of
441 qualified health insurance coverage for the subcontractor's employees and the employees'
442 dependents.
443 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)
444 during the duration of the contract is subject to penalties in accordance with administrative
445 rules adopted by the division under Subsection (3)(f).
446 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
447 requirements of Subsection (3)(d)(ii).
448 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)
449 during the duration of the contract is subject to penalties in accordance with administrative
450 rules adopted by the division under Subsection (3)(f).
451 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
452 requirements of Subsection (3)(d)(i).
453 (f) The division shall adopt administrative rules:
454 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
455 (ii) in coordination with:
456 (A) the Department of Environmental Quality in accordance with Section 19-1-206;
457 (B) the Department of Natural Resources in accordance with Section 79-2-404;
458 (C) a public transit district in accordance with Section 17B-2a-818.5;
459 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;
460 (E) the Department of Transportation in accordance with Section 72-6-107.5; and
461 (F) the Legislature's Administrative Rules Review Committee; and

462 (iii) which establish:
463 (A) the requirements and procedures a contractor must follow to demonstrate to the
464 director compliance with this Subsection (3) which shall include:
465 (I) that a contractor will not have to demonstrate compliance with Subsection [(5)(a) or
466 (b)] (3)(d)(i) or (ii) more than twice in any 12-month period; and
467 (II) that the actuarially equivalent determination required in Subsection (1) is met by
468 the contractor if the contractor provides the department or division with a written statement of
469 actuarial equivalency from either:
470 (Aa) the Utah Insurance Department [or];
471 (Bb) an actuary selected by the contractor or the contractor's insurer; [and] or
472 (Cc) an underwriter who is responsible for developing the employer group's premium
473 rates;
474 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
475 violates the provisions of this Subsection (3), which may include:
476 (I) a three-month suspension of the contractor or subcontractor from entering into
477 future contracts with the state upon the first violation;
478 (II) a six-month suspension of the contractor or subcontractor from entering into future
479 contracts with the state upon the second violation;
480 (III) an action for debarment of the contractor or subcontractor in accordance with
481 Section 63G-6-804 upon the third or subsequent violation; and
482 (IV) monetary penalties which may not exceed 50% of the amount necessary to
483 purchase qualified health insurance coverage for an employee and the dependents of an
484 employee of the contractor or subcontractor who was not offered qualified health insurance
485 coverage during the duration of the contract[.]; and
486 (C) a website on which the department shall post the benchmark for the qualified
487 health insurance coverage identified in Subsection (1)(e)(i).
488 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
489 subcontractor who intentionally violates the provisions of this section shall be liable to the
490 employee for health care costs [not covered by insurance.] that would have been covered by
491 qualified health insurance coverage.
492 (ii) An employer has an affirmative defense to a cause of action under Subsection

493 (3)(g)(i) if:
494 (A) the employer relied in good faith on a written statement of actuarial equivalency
495 provided by Ĥ→ :
495a (I) ←Ĥ an actuary; or
495b Ĥ→ **(II) an underwriter who is responsible for developing the employer group's premium**
495c **rates; or** ←Ĥ
496 (B) the department determines that compliance with this section is not required under
497 the provisions of Subsection (3)(b).
498 [~~(ii)~~] (iii) An employee has a private right of action only against the employee's
499 employer to enforce the provisions of this Subsection (3)(g).
500 (h) Any penalties imposed and collected under this section shall be deposited into the
501 Medicaid Restricted Account created by Section 26-18-402.
502 (i) The failure of a contractor or subcontractor to provide qualified health insurance
503 coverage as required by this section:
504 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
505 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
506 Legal and Contractual Remedies; and
507 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
508 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
509 or construction.
510 (4) The judgment of the director as to the responsibility and qualifications of a bidder
511 is conclusive, except in case of fraud or bad faith.
512 (5) The division shall make all payments to the contractor for completed work in
513 accordance with the contract and pay the interest specified in the contract on any payments that
514 are late.
515 (6) If any payment on a contract with a private contractor to do work for the division or
516 the State Building Board is retained or withheld, it shall be retained or withheld and released as
517 provided in Section 13-8-5.
518 Section 5. Section **63C-9-403** is amended to read:
519 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**
520 (1) For purposes of this section:
521 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
522 34A-2-104 who:
523 (i) works at least 30 hours per calendar week; and

524 (ii) meets employer eligibility waiting requirements for health care insurance which
525 may not exceed the first of the calendar month following 90 days from the date of hire.
526 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
527 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
528 the contract is entered into or renewed:
529 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~
530 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and~~]
531 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~
532 ~~the dependents of the employee;~~]
533 [~~(ii) (A) is a federally qualified high deductible health plan that has:~~]
534 [~~(I) the lowest deductible permitted for a federally qualified high deductible health~~
535 ~~plan; and~~]
536 [~~(II) an out of pocket maximum that does not exceed three times the amount of the~~
537 ~~annual deductible; and~~]
538 [~~(B) under which the employer pays 75% of the premium for the employee and the~~
539 ~~dependents of the employee; or~~]
540 [~~(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
541 ~~determined under Subsection (1)(c)(i); and~~]
542 [~~(B) under which the employer pays at least 75% of the premium of the employee and~~
543 ~~the dependents of the employee.~~]
544 (i) a health benefit plan and employer contribution level with a combined actuarial
545 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
546 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
547 a contribution level of 50% of the premium for the employee and the dependents of the
548 employee who reside or work in the state, in which:
549 (A) the employer pays at least 50% of the premium for the employee and the
550 dependents of the employee who reside or work in the state; and
551 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
552 (I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket
553 maximum based on income levels:
554 (Aa) the deductible is $750 per individual and $2,250 per family; and

555 (Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;
556 (II) dental coverage is not required; and
557 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
558 apply; or
559 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
560 deductible that is either:
561 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
562 or
563 (II) a deductible that is higher than the lowest deductible permitted for a federally
564 qualified high deductible health plan, but includes an employer contribution to a health savings
565 account in a dollar amount at least equal to the dollar amount difference between the lowest
566 deductible permitted for a federally qualified high deductible plan and the deductible for the
567 employer offered federally qualified high deductible plan;
568 (B) an out-of-pocket maximum that does not exceed three times the amount of the
569 annual deductible; and
570 (C) under which the employer pays 75% of the premium for the employee and the
571 dependents of the employee who work or reside in the state.
572 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
573 (2) Except as provided in Subsection (3), this section applies to all contracts entered
574 into by the board or on behalf of the board on or after July 1, 2009, if:
575 (a) the contract is for design or construction; and
576 (b) (i) the prime contract is in the amount of $1,500,000 or greater; or
577 (ii) a subcontract is in the amount of $750,000 or greater.
578 (3) This section does not apply if:
579 (a) the application of this section jeopardizes the receipt of federal funds;
580 (b) the contract is a sole source contract; or
581 (c) the contract is an emergency procurement.
582 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
583 or a modification to a contract, when the contract does not meet the initial threshold required
584 by Subsection (2).
585 (b) A person who intentionally uses change orders or contract modifications to

586 circumvent the requirements of Subsection (2) is guilty of an infraction.
587 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
588 director that the contractor has and will maintain an offer of qualified health insurance
589 coverage for the contractor's employees and the employees' dependents during the duration of
590 the contract.
591 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
592 shall demonstrate to the executive director that the subcontractor has and will maintain an offer
593 of qualified health insurance coverage for the subcontractor's employees and the employees'
594 dependents during the duration of the contract.
595 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
596 the duration of the contract is subject to penalties in accordance with administrative rules
597 adopted by the division under Subsection (6).
598 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
599 requirements of Subsection (5)(b).
600 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
601 the duration of the contract is subject to penalties in accordance with administrative rules
602 adopted by the department under Subsection (6).
603 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
604 requirements of Subsection (5)(a).
605 (6) The department shall adopt administrative rules:
606 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
607 (b) in coordination with:
608 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
609 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
610 (iii) the State Building Board in accordance with Section 63A-5-205;
611 (iv) a public transit district in accordance with Section 17B-2a-818.5;
612 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
613 (vi) the Legislature's Administrative Rules Review Committee; and
614 (c) which establish:
615 (i) the requirements and procedures a contractor must follow to demonstrate to the
616 executive director compliance with this section which shall include:

617 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
618 (b) more than twice in any 12-month period; and
619 (B) that the actuarially equivalent determination required in Subsection (1) is met by
620 the contractor if the contractor provides the department or division with a written statement of
621 actuarial equivalency from either:
622 (I) the Utah Insurance Department [or];
623 (II) an actuary selected by the contractor or the contractor's insurer; [and] or
624 (III) an underwriter who is responsible for developing the employer group's premium
625 rates;
626 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
627 violates the provisions of this section, which may include:
628 (A) a three-month suspension of the contractor or subcontractor from entering into
629 future contracts with the state upon the first violation;
630 (B) a six-month suspension of the contractor or subcontractor from entering into future
631 contracts with the state upon the second violation;
632 (C) an action for debarment of the contractor or subcontractor in accordance with
633 Section 63G-6-804 upon the third or subsequent violation; and
634 (D) monetary penalties which may not exceed 50% of the amount necessary to
635 purchase qualified health insurance coverage for employees and dependents of employees of
636 the contractor or subcontractor who were not offered qualified health insurance coverage
637 during the duration of the contract[.]; and
638 (iii) a website on which the department shall post the benchmark for the qualified
639 health insurance coverage identified in Subsection (1)(c)(i).
640 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
641 subcontractor who intentionally violates the provisions of this section shall be liable to the
642 employee for health care costs [not covered by insurance.] that would have been covered by
643 qualified health insurance coverage.
644 (ii) An employer has an affirmative defense to a cause of action under Subsection
645 (7)(a)(i) if:
646 (A) the employer relied in good faith on a written statement of actuarial equivalency
647 provided by Ĥ→ **:**
647a **(I)** ←Ĥ an actuary; or
647b Ĥ→ **(II) an underwriter who is responsible for developing the employer group's premium**
647c **rates; or** ←Ĥ

648 (B) the department determines that compliance with this section is not required under
649 the provisions of Subsection (3) or (4).
650 (b) An employee has a private right of action only against the employee's employer to
651 enforce the provisions of this Subsection (7).
652 (8) Any penalties imposed and collected under this section shall be deposited into the
653 Medicaid Restricted Account created in Section 26-18-402.
654 (9) The failure of a contractor or subcontractor to provide qualified health insurance
655 coverage as required by this section:
656 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
657 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
658 Legal and Contractual Remedies; and
659 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
660 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
661 or construction.
662 Section 6. Section **72-6-107.5** is amended to read:
663 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
664 **insurance coverage.**
665 (1) For purposes of this section:
666 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
667 34A-2-104 who:
668 (i) works at least 30 hours per calendar week; and
669 (ii) meets employer eligibility waiting requirements for health care insurance which
670 may not exceed the first day of the calendar month following 90 days from the date of hire.
671 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
672 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
673 the contract is entered into or renewed:
674 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~
675 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and~~]
676 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~
677 ~~the dependents of the employee;~~]
678 [~~(ii) (A) is a federally qualified high deductible health plan that has:~~]

679 [(I) the lowest deductible permitted for a federally qualified high deductible health
680 plan; and]
681 [(II) an out of pocket maximum that does not exceed three times the amount of the
682 annual deductible; and]
683 [(B) under which the employer pays 75% of the premium for the employee and the
684 dependents of the employee; or]
685 [(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
686 determined under Subsection (1)(c)(i); and]
687 [(B) under which the employer pays at least 75% of the premium of the employee and
688 the dependents of the employee.]
689 (i) a health benefit plan and employer contribution level with a combined actuarial
690 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
691 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
692 a contribution level of 50% of the premium for the employee and the dependents of the
693 employee who reside or work in the state, in which:
694 (A) the employer pays at least 50% of the premium for the employee and the
695 dependents of the employee who reside or work in the state; and
696 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
697 (I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket
698 maximum based on income levels:
699 (Aa) the deductible is $750 per individual and $2,250 per family; and
700 (Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;
701 (II) dental coverage is not required; and
702 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
703 apply; or
704 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
705 deductible that is either:
706 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
707 or
708 (II) a deductible that is higher than the lowest deductible permitted for a federally
709 qualified high deductible health plan, but includes an employer contribution to a health savings

710 account in a dollar amount at least equal to the dollar amount difference between the lowest
711 deductible permitted for a federally qualified high deductible plan and the deductible for the
712 employer offered federally qualified high deductible plan;
713 (B) an out-of-pocket maximum that does not exceed three times the amount of the
714 annual deductible; and
715 (C) under which the employer pays 75% of the premium for the employee and the
716 dependents of the employee who work or reside in the state.
717 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
718 (2) Except as provided in Subsection (3), this section applies to all contracts entered
719 into by the department on or after July 1, 2009, for construction or design of highways if:
720 (a) the prime contract is in the amount of $1,500,000 or greater; or
721 (b) a subcontract is in the amount of $750,000 or greater.
722 (3) This section does not apply if:
723 (a) the application of this section jeopardizes the receipt of federal funds;
724 (b) the contract is a sole source contract; or
725 (c) the contract is an emergency procurement.
726 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
727 or a modification to a contract, when the contract does not meet the initial threshold required
728 by Subsection (2).
729 (b) A person who intentionally uses change orders or contract modifications to
730 circumvent the requirements of Subsection (2) is guilty of an infraction.
731 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
732 the contractor has and will maintain an offer of qualified health insurance coverage for the
733 contractor's employees and the employees' dependents during the duration of the contract.
734 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
735 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
736 health insurance coverage for the subcontractor's employees and the employees' dependents
737 during the duration of the contract.
738 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
739 the duration of the contract is subject to penalties in accordance with administrative rules
740 adopted by the department under Subsection (6).

741 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
742 requirements of Subsection (5)(b).
743 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
744 the duration of the contract is subject to penalties in accordance with administrative rules
745 adopted by the department under Subsection (6).
746 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
747 requirements of Subsection (5)(a).
748 (6) The department shall adopt administrative rules:
749 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
750 (b) in coordination with:
751 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
752 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
753 (iii) the State Building Board in accordance with Section 63A-5-205;
754 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
755 (v) a public transit district in accordance with Section 17B-2a-818.5; and
756 (vi) the Legislature's Administrative Rules Review Committee; and
757 (c) which establish:
758 (i) the requirements and procedures a contractor must follow to demonstrate to the
759 department compliance with this section which shall include:
760 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
761 (b) more than twice in any 12-month period; and
762 (B) that the actuarially equivalent determination required in Subsection (1) is met by
763 the contractor if the contractor provides the department or division with a written statement of
764 actuarial equivalency from either<u>:</u>
765 <u>(I)</u> the Utah Insurance Department [~~or~~]<u>;</u>
766 <u>(II)</u> an actuary selected by the contractor or the contractor's insurer; [~~and~~] <u>or</u>
767 <u>(III) an underwriter who is responsible for developing the employer group's premium</u>
768 <u>rates;</u>
769 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
770 violates the provisions of this section, which may include:
771 (A) a three-month suspension of the contractor or subcontractor from entering into

772 future contracts with the state upon the first violation;
773 (B) a six-month suspension of the contractor or subcontractor from entering into future
774 contracts with the state upon the second violation;
775 (C) an action for debarment of the contractor or subcontractor in accordance with
776 Section 63G-6-804 upon the third or subsequent violation; and
777 (D) monetary penalties which may not exceed 50% of the amount necessary to
778 purchase qualified health insurance coverage for an employee and a dependent of the employee
779 of the contractor or subcontractor who was not offered qualified health insurance coverage
780 during the duration of the contract[~~.~~]; and
781 (iii) a website on which the department shall post the benchmark for the qualified
782 health insurance coverage identified in Subsection (1)(c)(i).
783 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
784 subcontractor who intentionally violates the provisions of this section shall be liable to the
785 employee for health care costs [~~not covered by insurance.~~] that would have been covered by
786 qualified health insurance coverage.
787 (ii) An employer has an affirmative defense to a cause of action under Subsection
788 (7)(a)(i) if:
789 (A) the employer relied in good faith on a written statement of actuarial equivalency
790 provided by **Ĥ→ :**
790a **(I)** **←Ĥ** an actuary; or
790b **Ĥ→ (II) an underwriter who is responsible for developing the employer group's premium**
790c **rates; or ←Ĥ**
791 (B) the department determines that compliance with this section is not required under
792 the provisions of Subsection (3) or (4).
793 (b) An employee has a private right of action only against the employee's employer to
794 enforce the provisions of this Subsection (7).
795 (8) Any penalties imposed and collected under this section shall be deposited into the
796 Medicaid Restricted Account created in Section 26-18-402.
797 (9) The failure of a contractor or subcontractor to provide qualified health insurance
798 coverage as required by this section:
799 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
800 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
801 Legal and Contractual Remedies; and
802 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

803 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
804 or construction.
805 Section 7. Section **79-2-404** is amended to read:
806 **79-2-404. Contracting powers of department -- Health insurance coverage.**
807 (1) For purposes of this section:
808 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
809 34A-2-104 who:
810 (i) works at least 30 hours per calendar week; and
811 (ii) meets employer eligibility waiting requirements for health care insurance which
812 may not exceed the first day of the calendar month following 90 days from the date of hire.
813 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
814 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
815 the contract is entered into or renewed:
816 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~
817 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and~~]
818 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~
819 ~~the dependents of the employee;~~]
820 [~~(ii) (A) is a federally qualified high deductible health plan that has:~~]
821 [~~(I) the lowest deductible permitted for a federally qualified high deductible health~~
822 ~~plan; and~~]
823 [~~(II) an out of pocket maximum that does not exceed three times the amount of the~~
824 ~~annual deductible; and~~]
825 [~~(B) under which the employer pays 75% of the premium for the employee and the~~
826 ~~dependents of the employee; or~~]
827 [~~(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
828 ~~determined under Subsection (1)(c)(i); and~~]
829 [~~(B) under which the employer pays at least 75% of the premium of the employee and~~
830 ~~the dependents of the employee.~~]
831 (i) a health benefit plan and employer contribution level with a combined actuarial
832 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
833 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and

834 a contribution level of 50% of the premium for the employee and the dependents of the
835 employee who reside or work in the state, in which:
836 (A) the employer pays at least 50% of the premium for the employee and the
837 dependents of the employee who reside or work in the state; and
838 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
839 (I) rather that the benchmark plan's deductible, and the benchmark plan's out-of-pocket
840 maximum based on income levels:
841 (Aa) the deductible is $750 per individual and $2,250 per family; and
842 (Bb) the out-of-pocket maximum is $3,000 per individual and $9,000 per family;
843 (II) dental coverage is not required; and
844 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
845 apply; or
846 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
847 deductible that is either:
848 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
849 or
850 (II) a deductible that is higher than the lowest deductible permitted for a federally
851 qualified high deductible health plan, but includes an employer contribution to a health savings
852 account in a dollar amount at least equal to the dollar amount difference between the lowest
853 deductible permitted for a federally qualified high deductible plan and the deductible for the
854 employer offered federally qualified high deductible plan;
855 (B) an out-of-pocket maximum that does not exceed three times the amount of the
856 annual deductible; and
857 (C) under which the employer pays 75% of the premium for the employee and the
858 dependents of the employee who work or reside in the state.
859 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
860 (2) Except as provided in Subsection (3), this section applies to all contracts entered
861 into by, or delegated to, the department or a division, board, or council of the department on or
862 after July 1, 2009, if:
863 (a) the contract is for design or construction; and
864 (b) (i) the prime contract is in the amount of $1,500,000 or greater; or

865 (ii) a subcontract is in the amount of $750,000 or greater.
866 (3) This section does not apply to contracts entered into by the department or a
867 division, board, or council of the department if:
868 (a) the application of this section jeopardizes the receipt of federal funds;
869 (b) the contract or agreement is between:
870 (i) the department or a division, board, or council of the department; and
871 (ii) (A) another agency of the state;
872 (B) the federal government;
873 (C) another state;
874 (D) an interstate agency;
875 (E) a political subdivision of this state; or
876 (F) a political subdivision of another state; or
877 (c) the contract or agreement is:
878 (i) for the purpose of disbursing grants or loans authorized by statute;
879 (ii) a sole source contract; or
880 (iii) an emergency procurement.
881 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
882 or a modification to a contract, when the contract does not meet the initial threshold required
883 by Subsection (2).
884 (b) A person who intentionally uses change orders or contract modifications to
885 circumvent the requirements of Subsection (2) is guilty of an infraction.
886 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
887 that the contractor has and will maintain an offer of qualified health insurance coverage for the
888 contractor's employees and the employees' dependents during the duration of the contract.
889 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
890 shall demonstrate to the department that the subcontractor has and will maintain an offer of
891 qualified health insurance coverage for the subcontractor's employees and the employees'
892 dependents during the duration of the contract.
893 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
894 the duration of the contract is subject to penalties in accordance with administrative rules
895 adopted by the department under Subsection (6).

896 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
897 requirements of Subsection (5)(b).
898 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
899 the duration of the contract is subject to penalties in accordance with administrative rules
900 adopted by the department under Subsection (6).
901 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
902 requirements of Subsection (5)(a).
903 (6) The department shall adopt administrative rules:
904 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
905 (b) in coordination with:
906 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
907 (ii) a public transit district in accordance with Section 17B-2a-818.5;
908 (iii) the State Building Board in accordance with Section 63A-5-205;
909 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
910 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
911 (vi) the Legislature's Administrative Rules Review Committee; and
912 (c) which establish:
913 (i) the requirements and procedures a contractor must follow to demonstrate
914 compliance with this section to the department which shall include:
915 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
916 (b) more than twice in any 12-month period; and
917 (B) that the actuarially equivalent determination required in Subsection (1) is met by
918 the contractor if the contractor provides the department or division with a written statement of
919 actuarial equivalency from either:
920 (I) the Utah Insurance Department [~~or~~];
921 (II) an actuary selected by the contractor or the contractor's insurer; [~~and~~] or
922 (III) an underwriter who is responsible for developing the employer group's premium
923 rates;
924 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
925 violates the provisions of this section, which may include:
926 (A) a three-month suspension of the contractor or subcontractor from entering into

927 future contracts with the state upon the first violation;
928 (B) a six-month suspension of the contractor or subcontractor from entering into future
929 contracts with the state upon the second violation;
930 (C) an action for debarment of the contractor or subcontractor in accordance with
931 Section 63G-6-804 upon the third or subsequent violation; and
932 (D) monetary penalties which may not exceed 50% of the amount necessary to
933 purchase qualified health insurance coverage for an employee and a dependent of an employee
934 of the contractor or subcontractor who was not offered qualified health insurance coverage
935 during the duration of the contract[~~.~~]; and
936 (iii) a website on which the department shall post the benchmark for the qualified
937 health insurance coverage identified in Subsection (1)(c)(i).
938 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
939 subcontractor who intentionally violates the provisions of this section shall be liable to the
940 employee for health care costs [~~not covered by insurance.~~] that would have been covered by
941 qualified health insurance coverage.
942 (ii) An employer has an affirmative defense to a cause of action under Subsection
943 (7)(a)(i) if:
944 (A) the employer relied in good faith on a written statement of actuarial equivalency
945 provided by **Ĥ→ :**
945a **(I) ←Ĥ** an actuary; or
945b **Ĥ→ (II) an underwriter who is responsible for developing the employer group's premium**
945c **rates; or ←Ĥ**
946 (B) the department determines that compliance with this section is not required under
947 the provisions of Subsection (3) or (4).
948 (b) An employee has a private right of action only against the employee's employer to
949 enforce the provisions of this Subsection (7).
950 (8) Any penalties imposed and collected under this section shall be deposited into the
951 Medicaid Restricted Account created in Section 26-18-402.
952 (9) The failure of a contractor or subcontractor to provide qualified health insurance
953 coverage as required by this section:
954 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
955 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
956 Legal and Contractual Remedies; and
957 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

958 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
959 or construction.

Legislative Review Note
as of 11-19-09 9:53 AM

Office of Legislative Research and General Counsel

Fiscal Note

H.B. 20 - Amendments to Health Insurance Coverage in State Contracts

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.