

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



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 ~~[(f) the lowest deductible permitted for a federally qualified high deductible health~~  
62 ~~plan; and]~~

63 ~~[(H) 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 than 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 [~~(e)~~] (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 actuary; or

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 [~~(f) the lowest deductible permitted for a federally qualified high deductible health  
206 plan; and]~~

207 [~~(H) 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 an actuary; or
- 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 ~~[(H) 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 than 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 an actuary; or

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 ~~[(H) 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 than 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 an actuary; or

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 than 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:

765 (I) the Utah Insurance Department [~~or~~];

766 (II) an actuary selected by the contractor or the contractor's insurer; [~~and~~] or

767 (III) an underwriter who is responsible for developing the employer group's premium  
768 rates;

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 an actuary; or

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 [~~(f) the lowest deductible permitted for a federally qualified high deductible health  
822 plan; and]~~

823 [~~(H) 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 than 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 an actuary; or

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**



---

---

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

**Fiscal Note**

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.

---