

- 30 **53B-27-303**, as last amended by Laws of Utah 2020, Chapter 365
- 31 **54-17-701**, as last amended by Laws of Utah 2016, Chapter 13
- 32 **63A-5b-607**, as last amended by Laws of Utah 2020, Chapter 32 and renumbered and
- 33 amended by Laws of Utah 2020, Chapter 152 and last amended by Coordination
- 34 Clause, Laws of Utah 2020, Chapter 152
- 35 **63A-13-202**, as last amended by Laws of Utah 2013, Chapter 359 and renumbered and
- 36 amended by Laws of Utah 2013, Chapter 12
- 37 **63A-13-305**, as enacted by Laws of Utah 2013, Chapter 12
- 38 **63C-9-403**, as last amended by Laws of Utah 2020, Chapters 32 and 152
- 39 **63G-3-301**, as last amended by Laws of Utah 2021, Chapter 382
- 40 **63G-3-304**, as last amended by Laws of Utah 2021, Chapter 437
- 41 **63G-3-402**, as last amended by Laws of Utah 2020, Chapter 408
- 42 **63G-3-403**, as last amended by Laws of Utah 2020, Chapter 408
- 43 **63G-3-501**, as last amended by Laws of Utah 2021, Chapter 437
- 44 **63G-3-502**, as last amended by Laws of Utah 2021, Chapter 437
- 45 **63N-6-203**, as last amended by Laws of Utah 2019, Chapter 214
- 46 **72-6-107.5**, as last amended by Laws of Utah 2020, Chapters 32 and 152
- 47 **79-2-404**, as last amended by Laws of Utah 2020, Chapters 32 and 152

49 *Be it enacted by the Legislature of the state of Utah:*

50 Section 1. Section **19-1-206** is amended to read:

51 **19-1-206. Contracting powers of department -- Health insurance coverage.**

52 (1) As used in this section:

53 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
 54 related to a single project.

55 (b) "Change order" means the same as that term is defined in Section **63G-6a-103**.

56 (c) "Employee" means, as defined in Section **34A-2-104**, an "employee," "worker," or
 57 "operative" who:

58 (i) works at least 30 hours per calendar week; and
59 (ii) meets employer eligibility waiting requirements for health care insurance, which
60 may not exceed the first day of the calendar month following 60 days after the day on which
61 the individual is hired.

62 (d) "Health benefit plan" means:

63 (i) the same as that term is defined in Section 31A-1-301; or

64 (ii) an employee welfare benefit plan:

65 (A) established under the Employee Retirement Income Security Act of 1974, 29
66 U.S.C. Sec. 1001 et seq.;

67 (B) for an employer with 100 or more employees; and

68 (C) in which the employer establishes a self-funded or partially self-funded group
69 health plan to provide medical care for the employer's employees and dependents of the
70 employees.

71 (e) "Qualified health coverage" means the same as that term is defined in Section
72 26-40-115.

73 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

74 (g) "Third party administrator" or "administrator" means the same as that term is
75 defined in Section 31A-1-301.

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

77 (a) a contractor of a design or construction contract entered into by, or delegated to, the
78 department, or a division or board of the department, on or after July 1, 2009, if the prime
79 contract is in an aggregate amount equal to or greater than \$2,000,000; and

80 (b) a subcontractor of a contractor of a design or construction contract entered into by,
81 or delegated to, the department, or a division or board of the department, on or after July 1,
82 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

83 (3) This section does not apply to contracts entered into by the department or a division
84 or board of the department if:

85 (a) the application of this section jeopardizes the receipt of federal funds;

- 86 (b) the contract or agreement is between:
- 87 (i) the department or a division or board of the department; and
- 88 (ii) (A) another agency of the state;
- 89 (B) the federal government;
- 90 (C) another state;
- 91 (D) an interstate agency;
- 92 (E) a political subdivision of this state; or
- 93 (F) a political subdivision of another state;
- 94 (c) the executive director determines that applying the requirements of this section to a
- 95 particular contract interferes with the effective response to an immediate health and safety
- 96 threat from the environment; or
- 97 (d) the contract is:
- 98 (i) a sole source contract; or
- 99 (ii) an emergency procurement.
- 100 (4) A person that intentionally uses change orders, contract modifications, or multiple
- 101 contracts to circumvent the requirements of this section is guilty of an infraction.
- 102 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
- 103 executive director that the contractor has and will maintain an offer of qualified health
- 104 coverage for the contractor's employees and the employees' dependents during the duration of
- 105 the contract by submitting to the executive director a written statement that:
- 106 (i) the contractor offers qualified health coverage that complies with Section
- 107 [26-40-115](#);
- 108 (ii) is from:
- 109 (A) an actuary selected by the contractor or the contractor's insurer;
- 110 (B) an underwriter who is responsible for developing the employer group's premium
- 111 rates; or
- 112 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
- 113 an actuary or underwriter selected by a third party administrator; and

114 (iii) was created within one year before the day on which the statement is submitted.

115 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
116 shall provide the actuary or underwriter selected by an administrator, as described in
117 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
118 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
119 requirements of qualified health coverage.

120 (ii) A contractor may not make a change to the contractor's contribution to the health
121 benefit plan, unless the contractor provides notice to:

122 (A) the actuary or underwriter selected by an administrator, as described in Subsection
123 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
124 Subsection (5)(a) in compliance with this section; and

125 (B) the department.

126 (c) A contractor that is subject to the requirements of this section shall:

127 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
128 is subject to the requirements of this section shall obtain and maintain an offer of qualified
129 health coverage for the subcontractor's employees and the employees' dependents during the
130 duration of the subcontract; and

131 (ii) obtain from a subcontractor that is subject to the requirements of this section a
132 written statement that:

133 (A) the subcontractor offers qualified health coverage that complies with Section
134 [26-40-115](#);

135 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
136 underwriter who is responsible for developing the employer group's premium rates, or if the
137 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
138 underwriter selected by an administrator; and

139 (C) was created within one year before the day on which the contractor obtains the
140 statement.

141 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage

142 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
143 accordance with administrative rules adopted by the department under Subsection (6).

144 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
145 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

146 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
147 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to
148 penalties in accordance with administrative rules adopted by the department under Subsection
149 (6).

150 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
151 an offer of qualified health coverage described in Subsection (5)(a).

152 (6) The department shall adopt administrative rules:

153 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

154 (b) in coordination with:

155 (i) a public transit district in accordance with Section 17B-2a-818.5;

156 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

157 (iii) the State Building Board in accordance with Section 63A-5b-607;

158 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

159 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

160 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;

161 and

162 (c) that establish:

163 (i) the requirements and procedures a contractor and a subcontractor shall follow to
164 demonstrate compliance with this section, including:

165 (A) that a contractor or subcontractor's compliance with this section is subject to an
166 audit by the department or the Office of the Legislative Auditor General;

167 (B) that a contractor that is subject to the requirements of this section shall obtain a
168 written statement described in Subsection (5)(a); and

169 (C) that a subcontractor that is subject to the requirements of this section shall obtain a

170 written statement described in Subsection (5)(c)(ii);

171 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
172 violates the provisions of this section, which may include:

173 (A) a three-month suspension of the contractor or subcontractor from entering into
174 future contracts with the state upon the first violation;

175 (B) a six-month suspension of the contractor or subcontractor from entering into future
176 contracts with the state upon the second violation;

177 (C) an action for debarment of the contractor or subcontractor in accordance with
178 Section [63G-6a-904](#) upon the third or subsequent violation; and

179 (D) notwithstanding Section [19-1-303](#), monetary penalties which may not exceed 50%
180 of the amount necessary to purchase qualified health coverage for an employee and the
181 dependents of an employee of the contractor or subcontractor who was not offered qualified
182 health coverage during the duration of the contract; and

183 (iii) a website on which the department shall post the commercially equivalent
184 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by
185 the Department of Health, in accordance with Subsection [26-40-115](#)(2).

186 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
187 or subcontractor who intentionally violates the provisions of this section is liable to the
188 employee for health care costs that would have been covered by qualified health coverage.

189 (ii) An employer has an affirmative defense to a cause of action under Subsection
190 (7)(a)(i) if:

191 (A) the employer relied in good faith on a written statement described in Subsection
192 (5)(a) or (5)(c)(ii); or

193 (B) the department determines that compliance with this section is not required under
194 the provisions of Subsection (3).

195 (b) An employee has a private right of action only against the employee's employer to
196 enforce the provisions of this Subsection (7).

197 (8) Any penalties imposed and collected under this section shall be deposited into the

198 Medicaid Restricted Account created in Section 26-18-402.

199 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
200 required by this section:

201 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
202 or contractor under:

203 (i) Section 63G-6a-1602; or

204 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

205 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
206 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
207 or construction.

208 (10) An administrator, including an administrator's actuary or underwriter, who
209 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
210 coverage of a contractor or subcontractor who provides a health benefit plan described in
211 Subsection (1)(d)(ii):

212 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
213 unless the administrator commits gross negligence in preparing the written statement;

214 (b) is not liable for any error in the written statement if the administrator relied in good
215 faith on information from the contractor or subcontractor; and

216 (c) may require as a condition of providing the written statement that a contractor or
217 subcontractor hold the administrator harmless for an action arising under this section.

218 Section 2. Section 19-1-207 is amended to read:

219 **19-1-207. Regulatory certainty to support economic recovery.**

220 (1) On or before June 30, 2021, the Air Quality Board or the Water Quality Board may
221 not make, amend, or repeal a rule related to air or water quality pursuant to this title, if formal
222 rulemaking was not initiated on or before July 1, 2020, unless the rule constitutes:

223 (a) a state rule related to a federally-delegated program;

224 (b) a rule mandated by statute to be made, amended, or repealed on or before July 1,
225 2020; or

226 (c) subject to Subsection (2), a rule that is necessary because failure to make, amend, or
227 repeal the rule will:

228 (i) cause an imminent peril to the public health, safety, or welfare;

229 (ii) cause an imminent budget reduction because of budget restraints or federal
230 requirements;

231 (iii) place the agency in violation of federal or state law; or

232 (iv) fail to provide regulatory relief.

233 (2) In addition to complying with Title 63G, Chapter 3, Utah Administrative
234 Rulemaking Act, the department shall report to the Administrative Rules Review and General
235 Oversight Committee as to whether the need to act meets the requirements of Subsection
236 (1)(c).

237 (3) On or after August 31, 2020, but on or before June 30, 2021, the Air Quality Board,
238 Division of Air Quality, Water Quality Board, or Division of Water Quality may not impose a
239 new fee or increase a fee related to air or water quality pursuant to this title or rules made under
240 this title.

241 (4) Only the Legislature may extend the time limitations of this section.

242 (5) Notwithstanding the other provisions of this section, this section does not apply to a
243 rule, fee, or fee increase to the extent that the rule, fee, or fee increase applies to an activity in a
244 county of the first or second class.

245 (6) Notwithstanding the other provisions of this section, the agencies may engage with
246 stakeholders in the process of discussing, developing, and drafting a rule, fee, or fee increase
247 on or after July 1, 2020, but on or before June 30, 2021.

248 Section 3. Section **19-5-104.5** is amended to read:

249 **19-5-104.5. Legislative review and approval.**

250 (1) Before sending a total maximum daily load and implementation strategy to the EPA
251 for review and approval, the Water Quality Board shall submit the total maximum daily load:

252 (a) for review to the Natural Resources, Agriculture, and Environment Interim
253 Committee if the total maximum daily load will require a public or private expenditure in

254 excess of \$10,000,000 but less than \$100,000,000 for compliance; or

255 (b) for approval to the Legislature if the total maximum daily load will require a public
256 or private expenditure of \$100,000,000 or more.

257 (2) (a) As used in this Subsection (2):

258 (i) "Expenditure" means the act of expending funds:

259 (A) by an individual public facility with a Utah Pollutant Discharge Elimination
260 System permit, or by a group of private agricultural facilities; and

261 (B) through an initial capital investment, or through operational costs over a three-year
262 period.

263 (ii) "Utah Pollutant Discharge Elimination System" means the state permit system
264 created in accordance with 33 U.S.C. Sec. 1342.

265 (b) Before the board adopts a nitrogen or phosphorus rule or standard, the board shall
266 submit the rule or standard as directed in Subsections (2)(c) and (d).

267 (c) (i) If compliance with the rule or standard requires an expenditure in excess of
268 \$250,000, but less than \$10,000,000, the board shall submit the rule or standard for review to
269 the Natural Resources, Agriculture, and Environment Interim Committee.

270 (ii) (A) Except as provided in Subsection (2)(c)(ii)(B), the Natural Resources,
271 Agriculture, and Environment Interim Committee shall review a rule or standard the board
272 submits under Subsection (2)(c)(i) during the Natural Resources, Agriculture, and Environment
273 Interim Committee's committee meeting immediately following the day on which the board
274 submits the rule or standard.

275 (B) If the committee meeting described in Subsection (2)(c)(ii)(A) is within five days
276 after the day on which the board submits the rule or standard for review, the Natural Resources,
277 Agriculture, and Environment Interim Committee shall review the rule or standard during the
278 committee meeting described in Subsection (2)(c)(ii)(A) or during the committee meeting
279 immediately following the committee meeting described in Subsection (2)(c)(ii)(A).

280 (d) If compliance with the rule or standard requires an expenditure of \$10,000,000 or
281 more, the board shall submit the rule or standard for approval to the Legislature.

282 (e) (i) A facility shall estimate the cost of compliance with a board-proposed rule or
283 standard described in Subsection (2)(b) using:

- 284 (A) an independent, licensed engineer; and
- 285 (B) industry-accepted project cost estimate methods.

286 (ii) The board may evaluate and report on a compliance estimate described in
287 Subsection (2)(e)(i).

288 (f) If there is a discrepancy in the estimated cost to comply with a rule or standard, the
289 Office of the Legislative Fiscal Analyst shall determine the estimated cost to comply with the
290 rule or standard.

291 (3) In reviewing a rule or standard, the Natural Resources, Agriculture, and
292 Environment Interim Committee may:

293 (a) consider the impact of the rule or standard on:

- 294 (i) economic costs and benefit;
- 295 (ii) public health; and
- 296 (iii) the environment;

297 (b) suggest additional areas of consideration; or

298 (c) recommend the rule or standard to the board for:

- 299 (i) adoption; or
- 300 (ii) re-evaluation followed by further review by the Natural Resources, Agriculture,
301 and Environment Interim Committee.

302 (4) When the Natural Resources, Agriculture, and Environment Interim Committee
303 sets the review of a rule or standard submitted under Subsection (2)(c)(i) as an agenda item, the
304 committee shall:

305 (a) before the review, directly inform the chairs of the Administrative Rules Review
306 and General Oversight Committee of the coming review, including the date, time, and place of
307 the review; and

308 (b) after the review, directly inform the chairs of the Administrative Rules Review and
309 General Oversight Committee of the outcome of the review, including any recommendation.

310 Section 4. Section **26-18-20** is amended to read:

311 **26-18-20. Review of claims -- Audit and investigation procedures.**

312 (1) (a) The department shall adopt administrative rules in accordance with Title 63G,
313 Chapter 3, Utah Administrative Rulemaking Act, and in consultation with providers and health
314 care professionals subject to audit and investigation under the state Medicaid program, to
315 establish procedures for audits and investigations that are fair and consistent with the duties of
316 the department as the single state agency responsible for the administration of the Medicaid
317 program under Section **26-18-3** and Title XIX of the Social Security Act.

318 (b) If the providers and health care professionals do not agree with the rules proposed
319 or adopted by the department under Subsection (1)(a), the providers or health care
320 professionals may:

321 (i) request a hearing for the proposed administrative rule or seek any other remedies
322 under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

323 (ii) request a review of the rule by the Legislature's Administrative Rules Review and
324 General Oversight Committee created in Section **63G-3-501**.

325 (2) The department shall:

326 (a) notify and educate providers and health care professionals subject to audit and
327 investigation under the Medicaid program of the providers' and health care professionals'
328 responsibilities and rights under the administrative rules adopted by the department under the
329 provisions of this section;

330 (b) ensure that the department, or any entity that contracts with the department to
331 conduct audits:

332 (i) has on staff or contracts with a medical or dental professional who is experienced in
333 the treatment, billing, and coding procedures used by the type of provider being audited; and

334 (ii) uses the services of the appropriate professional described in Subsection (3)(b)(i) if
335 the provider who is the subject of the audit disputes the findings of the audit;

336 (c) ensure that a finding of overpayment or underpayment to a provider is not based on
337 extrapolation, as defined in Section **63A-13-102**, unless:

338 (i) there is a determination that the level of payment error involving the provider
339 exceeds a 10% error rate:

340 (A) for a sample of claims for a particular service code; and

341 (B) over a three year period of time;

342 (ii) documented education intervention has failed to correct the level of payment error;
343 and

344 (iii) the value of the claims for the provider, in aggregate, exceeds \$200,000 in
345 reimbursement for a particular service code on an annual basis; and

346 (d) require that any entity with which the office contracts, for the purpose of
347 conducting an audit of a service provider, shall be paid on a flat fee basis for identifying both
348 overpayments and underpayments.

349 (3) (a) If the department, or a contractor on behalf of the department:

350 (i) intends to implement the use of extrapolation as a method of auditing claims, the
351 department shall, prior to adopting the extrapolation method of auditing, report its intent to use
352 extrapolation to the Social Services Appropriations Subcommittee; and

353 (ii) determines Subsections (2)(c)(i) through (iii) are applicable to a provider, the
354 department or the contractor may use extrapolation only for the service code associated with
355 the findings under Subsections (2)(c)(i) through (iii).

356 (b) (i) If extrapolation is used under this section, a provider may, at the provider's
357 option, appeal the results of the audit based on:

358 (A) each individual claim; or

359 (B) the extrapolation sample.

360 (ii) Nothing in this section limits a provider's right to appeal the audit under Title 63G,
361 General Government, Title 63G, Chapter 4, Administrative Procedures Act, the Medicaid
362 program and its manual or rules, or other laws or rules that may provide remedies to providers.

363 Section 5. Section **40-6-22** is amended to read:

364 **40-6-22. Regulatory certainty to support economic recovery.**

365 (1) On or before June 30, 2021, the board or division may not make, amend, or repeal a

366 rule pursuant to this title, if formal rulemaking was not initiated on or before July 1, 2020,
367 unless the rule constitutes:

368 (a) a state rule related to a federally-delegated program;

369 (b) a rule mandated by statute to be made, amended, or repealed on or before July 1,
370 2020; or

371 (c) subject to Subsection (2), a rule that is necessary because failure to make, amend, or
372 repeal the rule will:

373 (i) cause an imminent peril to the public health, safety, or welfare;

374 (ii) cause an imminent budget reduction because of budget restraints or federal
375 requirements;

376 (iii) place the agency in violation of federal or state law; or

377 (iv) fail to provide regulatory relief.

378 (2) In addition to complying with Title 63G, Chapter 3, Utah Administrative
379 Rulemaking Act, the board or division shall report to the Administrative Rules Review and
380 General Oversight Committee as to whether the need to act meets the requirements of
381 Subsection (1)(c).

382 (3) On or after August 31, 2020, but on or before June 30, 2021, the board or division
383 may not impose a new fee or increase a fee pursuant to this title or rules made under this title.

384 (4) Only the Legislature may extend the time limitations of this section.

385 (5) Notwithstanding the other provisions of this section, this section does not apply to a
386 rule, fee, or fee increase to the extent that the rule, fee, or fee increase applies to an activity in a
387 county of the first or second class.

388 (6) Notwithstanding the other provisions of this section, the agencies may engage with
389 stakeholders in the process of discussing, developing, and drafting a rule, fee, or fee increase
390 on or after July 1, 2020, but on or before June 30, 2021.

391 Section 6. Section **53B-27-303** is amended to read:

392 **53B-27-303. Complaint process -- Reporting.**

393 (1) Before August 1, 2019, the board shall make rules in accordance with Title 63G,

394 Chapter 3, Utah Administrative Rulemaking Act, establishing a procedure whereby a student
395 enrolled in an institution may submit a complaint to the board alleging a policy of the
396 institution directly affects one or more of the student's civil liberties.

397 (2) (a) When a student submits a complaint in accordance with the rules adopted under
398 Subsection (1), the board shall:

399 (i) examine the complaint and, within 30 days after the day on which the board
400 receives the complaint, determine whether the complaint is made in good faith; and

401 (ii) (A) if the board determines that the complaint is made in good faith, direct the
402 institution against which the complaint is made to initiate rulemaking proceedings for the
403 challenged policy; or

404 (B) if the board determines that the complaint is made in bad faith, dismiss the
405 complaint.

406 (b) Before November 30 of each year, the board shall submit a report to the
407 Administrative Rules Review and General Oversight Committee detailing:

408 (i) the number of complaints the board received during the preceding year;

409 (ii) the number of complaints the board found to be made in good faith during the
410 preceding year; and

411 (iii) each policy that is the subject of a good-faith complaint that the board received
412 during the preceding year.

413 (3) If the board directs an institution to initiate rulemaking proceedings for a
414 challenged policy in accordance with this section, the institution shall initiate rulemaking
415 proceedings for the policy within 60 days after the day on which the board directs the
416 institution.

417 Section 7. Section **54-17-701** is amended to read:

418 **54-17-701. Rules for carbon capture and geological storage.**

419 (1) By January 1, 2011, the Division of Water Quality and the Division of Air Quality,
420 on behalf of the Board of Water Quality and the Board of Air Quality, respectively, in
421 collaboration with the commission and the Division of Oil, Gas, and Mining and the Utah

422 Geological Survey, shall present recommended rules to the Legislature's Administrative Rules
423 Review and General Oversight Committee for the following in connection with carbon capture
424 and accompanying geological sequestration of captured carbon:

- 425 (a) site characterization approval;
- 426 (b) geomechanical, geochemical, and hydrogeological simulation;
- 427 (c) risk assessment;
- 428 (d) mitigation and remediation protocols;
- 429 (e) issuance of permits for test, injection, and monitoring wells;
- 430 (f) specifications for the drilling, construction, and maintenance of wells;
- 431 (g) issues concerning ownership of subsurface rights and pore space;
- 432 (h) allowed composition of injected matter;
- 433 (i) testing, monitoring, measurement, and verification for the entirety of the carbon
434 capture and geologic sequestration chain of operations, from the point of capture of the carbon
435 dioxide to the sequestration site;
- 436 (j) closure and decommissioning procedure;
- 437 (k) short- and long-term liability and indemnification for sequestration sites;
- 438 (l) conversion of enhanced oil recovery operations to carbon dioxide geological
439 sequestration sites; and
- 440 (m) other issues as identified.

441 (2) The entities listed in Subsection (1) shall report to the Legislature's Administrative
442 Rules Review and General Oversight Committee any proposals for additional statutory changes
443 needed to implement rules contemplated under Subsection (1).

444 (3) On or before July 1, 2009, the entities listed in Subsection (1) shall submit to the
445 Legislature's Public Utilities, Energy, and Technology and Natural Resources, Agriculture, and
446 Environment Interim Committees a progress report on the development of the recommended
447 rules required by this part.

448 (4) The recommended rules developed under this section apply to the injection of
449 carbon dioxide and other associated injectants in allowable types of geological formations for

450 the purpose of reducing emissions to the atmosphere through long-term geological
451 sequestration as required by law or undertaken voluntarily or for subsequent beneficial reuse.

452 (5) The recommended rules developed under this section do not apply to the injection
453 of fluids through the use of Class II injection wells as defined in 40 C.F.R. 144.6(b) for the
454 purpose of enhanced hydrocarbon recovery.

455 (6) Rules recommended under this section shall:

456 (a) ensure that adequate health and safety standards are met;

457 (b) minimize the risk of unacceptable leakage from the injection well and injection
458 zone for carbon capture and geologic sequestration; and

459 (c) provide adequate regulatory oversight and public information concerning carbon
460 capture and geologic sequestration.

461 Section 8. Section **63A-5b-607** is amended to read:

462 **63A-5b-607. Health insurance requirements -- Penalties.**

463 (1) As used in this section:

464 (a) "Aggregate amount" means the dollar sum of all contracts, change orders, and
465 modifications for a single project.

466 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

467 (c) "Eligible employee" means an employee, as defined in Section [34A-2-104](#), who:

468 (i) works at least 30 hours per calendar week; and

469 (ii) meets the employer eligibility waiting period for qualified health insurance
470 coverage provided by the employer.

471 (d) "Health benefit plan" means:

472 (i) the same as that term is defined in Section [31A-1-301](#); or

473 (ii) an employee welfare benefit plan:

474 (A) established under the Employee Retirement Income Security Act of 1974, 29

475 U.S.C. Sec. 1001 et seq.;

476 (B) for an employer with 100 or more employees; and

477 (C) in which the employer establishes a self-funded or partially self-funded group

478 health plan to provide medical care for the employer's employees and dependents of the
479 employees.

480 (e) "Qualified health insurance coverage" means the same as that term is defined in
481 Section [26-40-115](#).

482 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).

483 (g) "Third party administrator" or "administrator" means the same as that term is
484 defined in Section [31A-1-301](#).

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

486 (a) a contractor of a design or construction contract with the division if the prime
487 contract is in an aggregate amount of \$2,000,000 or more; and

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

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

491 (a) the application of this section jeopardizes the division's receipt of federal funds;

492 (b) the contract is a sole source contract, as defined in Section [63G-6a-103](#); or

493 (c) the contract is the result of an emergency procurement.

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

496 (5) (a) A contractor that is subject to the requirements of this section shall:

497 (i) make and maintain an offer of qualified health coverage for the contractor's eligible
498 employees and the eligible employees' dependents; and

499 (ii) submit to the director a written statement demonstrating that the contractor is in
500 compliance with Subsection (5)(a)(i).

501 (b) A statement under Subsection (5)(a)(ii):

502 (i) shall be from:

503 (A) an actuary selected by the contractor or the contractor's insurer;

504 (B) an underwriter who is responsible for developing the employer group's premium
505 rates; or

506 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
507 an actuary or underwriter selected by a third party administrator; and

508 (ii) may not be created more than one year before the day on which the contractor
509 submits the statement to the director.

510 (c) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
511 shall provide the actuary or underwriter selected by an administrator, as described in
512 Subsection (5)(b)(i)(C), sufficient information to determine whether the contractor's
513 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
514 requirements of qualified health coverage.

515 (ii) A contractor may not make a change to the contractor's contribution to the health
516 benefit plan, unless the contractor provides notice to:

517 (A) the actuary or underwriter selected by an administrator, as described in Subsection
518 (5)(b)(i)(C), for the actuary or underwriter to update the written statement described in
519 Subsection (5)(a) in compliance with this section; and

520 (B) the division.

521 (6) (a) A contractor that is subject to the requirements of this section shall:

522 (i) ensure that each contract the contractor enters with a subcontractor that is subject to
523 the requirements of this section requires the subcontractor to obtain and maintain an offer of
524 qualified health coverage for the subcontractor's eligible employees and the eligible employees'
525 dependents during the duration of the subcontract; and

526 (ii) obtain from a subcontractor referred to in Subsection (6)(a)(i) a written statement
527 demonstrating that the subcontractor offers qualified health coverage to eligible employees and
528 eligible employees' dependents.

529 (b) A statement under Subsection (6)(a)(ii):

530 (i) shall be from:

531 (A) an actuary selected by the subcontractor or the subcontractor's insurer;

532 (B) an underwriter who is responsible for developing the employer group's premium
533 rates; or

534 (C) if the subcontractor provides a health benefit plan described in Subsection
535 (1)(d)(ii), an actuary or underwriter selected by an administrator; and
536 (ii) may not be created more than one year before the day on which the contractor
537 obtains the statement from the subcontractor.

538 (7) (a) (i) A contractor that fails to maintain an offer of qualified health coverage
539 during the duration of the contract as required in this section is subject to penalties in
540 accordance with administrative rules adopted by the division under this section.

541 (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain
542 and maintain an offer of qualified health coverage as required in this section.

543 (b) (i) A subcontractor that fails to obtain and maintain an offer of qualified health
544 coverage during the duration of the subcontract as required in this section is subject to penalties
545 in accordance with administrative rules adopted by the division under this section.

546 (ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain
547 an offer of qualified health coverage as required in this section.

548 (8) The division shall adopt administrative rules:

549 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

550 (b) in coordination with:

551 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

552 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

553 (iii) a public transit district in accordance with Section 17B-2a-818.5;

554 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

555 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

556 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;

557 and

558 (c) that establish:

559 (i) the requirements and procedures for a contractor and a subcontractor to demonstrate
560 compliance with this section, including:

561 (A) a provision that a contractor or subcontractor's compliance with this section is

562 subject to an audit by the division or the Office of the Legislative Auditor General;

563 (B) a provision that a contractor that is subject to the requirements of this section

564 obtain a written statement as provided in Subsection (5); and

565 (C) a provision that a subcontractor that is subject to the requirements of this section

566 obtain a written statement as provided in Subsection (6);

567 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally

568 violates the provisions of this section, which may include:

569 (A) a three-month suspension of the contractor or subcontractor from entering into a

570 future contract with the state upon the first violation;

571 (B) a six-month suspension of the contractor or subcontractor from entering into a

572 future contract with the state upon the second violation;

573 (C) an action for debarment of the contractor or subcontractor in accordance with

574 Section [63G-6a-904](#) upon the third or subsequent violation; and

575 (D) monetary penalties which may not exceed 50% of the amount necessary to

576 purchase qualified health coverage for eligible employees and dependents of eligible

577 employees of the contractor or subcontractor who were not offered qualified health coverage

578 during the duration of the contract; and

579 (iii) a website for the department to post the commercially equivalent benchmark for

580 the qualified health coverage that is provided by the Department of Health in accordance with

581 Subsection [26-40-115\(2\)](#).

582 (9) During the duration of a contract, the division may perform an audit to verify a

583 contractor or subcontractor's compliance with this section.

584 (10) (a) Upon the division's request, a contractor or subcontractor shall provide the

585 division:

586 (i) a signed actuarial certification that the coverage the contractor or subcontractor

587 offers is qualified health coverage; or

588 (ii) all relevant documents and information necessary for the division to determine

589 compliance with this section.

590 (b) If a contractor or subcontractor provides the documents and information described
591 in Subsection (10)(a)(i), the Insurance Department shall assist the division in determining if the
592 coverage the contractor or subcontractor offers is qualified health coverage.

593 (11) (a) (i) In addition to the penalties imposed under Subsection (7), a contractor or
594 subcontractor that intentionally violates the provisions of this section is liable to an eligible
595 employee for health care costs that would have been covered by qualified health coverage.

596 (ii) An employer has an affirmative defense to a cause of action under Subsection
597 (11)(a)(i) if:

598 (A) the employer relied in good faith on a written statement described in Subsection (5)
599 or (6); or

600 (B) the department determines that compliance with this section is not required under
601 the provisions of Subsection (3).

602 (b) An eligible employee has a private right of action against the employee's employer
603 only as provided in this Subsection (11).

604 (12) The director shall cause money collected from the imposition and collection of a
605 penalty under this section to be deposited into the Medicaid Restricted Account created by
606 Section [26-18-402](#).

607 (13) The failure of a contractor or subcontractor to provide qualified health coverage as
608 required by this section:

609 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
610 or contractor under:

611 (i) Section [63G-6a-1602](#); or

612 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

613 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
614 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
615 or construction.

616 (14) An employer's waiting period for an employee to become eligible for qualified
617 health coverage may not extend beyond the first day of the calendar month following 60 days

618 after the day on which the employee is hired.

619 (15) An administrator, including an administrator's actuary or underwriter, who
620 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
621 coverage of a contractor or subcontractor who provides a health benefit plan described in
622 Subsection (1)(d)(ii):

623 (a) subject to Subsection (11)(b), is not liable for an error in the written statement,
624 unless the administrator commits gross negligence in preparing the written statement;

625 (b) is not liable for any error in the written statement if the administrator relied in good
626 faith on information from the contractor or subcontractor; and

627 (c) may require as a condition of providing the written statement that a contractor or
628 subcontractor hold the administrator harmless for an action arising under this section.

629 Section 9. Section **63A-13-202** is amended to read:

630 **63A-13-202. Duties and powers of inspector general and office.**

631 (1) The inspector general of Medicaid services shall:

632 (a) administer, direct, and manage the office;

633 (b) inspect and monitor the following in relation to the state Medicaid program:

634 (i) the use and expenditure of federal and state funds;

635 (ii) the provision of health benefits and other services;

636 (iii) implementation of, and compliance with, state and federal requirements; and

637 (iv) records and recordkeeping procedures;

638 (c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;

639 (d) investigate and identify potential or actual fraud, waste, or abuse in the state
640 Medicaid program;

641 (e) consult with the Centers for Medicaid and Medicare Services and other states to
642 determine and implement best practices for:

643 (i) educating and communicating with health care professionals and providers about
644 program and audit policies and procedures;

645 (ii) discovering and eliminating fraud, waste, and abuse of Medicaid funds; and

646 (iii) differentiating between honest mistakes and intentional errors, or fraud, waste, and
647 abuse, if the office enters into settlement negotiations with the provider or health care
648 professional;

649 (f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse
650 in the state Medicaid program;

651 (g) work closely with the fraud unit to identify and recover improperly or fraudulently
652 expended Medicaid funds;

653 (h) audit, inspect, and evaluate the functioning of the division for the purpose of
654 making recommendations to the Legislature and the department to ensure that the state
655 Medicaid program is managed:

656 (i) in the most efficient and cost-effective manner possible; and

657 (ii) in a manner that promotes adequate provider and health care professional
658 participation and the provision of appropriate health benefits and services;

659 (i) regularly advise the department and the division of an action that could be taken to
660 ensure that the state Medicaid program is managed in the most efficient and cost-effective
661 manner possible;

662 (j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid
663 program, to the fraud unit;

664 (k) refer potential criminal conduct, including relevant data from the controlled
665 substance database, relating to Medicaid fraud, to law enforcement in accordance with Title 58,
666 Chapter 37f, Controlled Substance Database Act;

667 (l) determine ways to:

668 (i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program;
669 and

670 (ii) balance efforts to reduce costs and avoid or minimize increased costs of the state
671 Medicaid program with the need to encourage robust health care professional and provider
672 participation in the state Medicaid program;

673 (m) recover improperly paid Medicaid funds;

- 674 (n) track recovery of Medicaid funds by the state;
- 675 (o) in accordance with Section 63A-13-502:
- 676 (i) report on the actions and findings of the inspector general; and
- 677 (ii) make recommendations to the Legislature and the governor;
- 678 (p) provide training to:
- 679 (i) agencies and employees on identifying potential fraud, waste, or abuse of Medicaid
- 680 funds; and
- 681 (ii) health care professionals and providers on program and audit policies and
- 682 compliance; and
- 683 (q) develop and implement principles and standards for the fulfillment of the duties of
- 684 the inspector general, based on principles and standards used by:
- 685 (i) the Federal Offices of Inspector General;
- 686 (ii) the Association of Inspectors General; and
- 687 (iii) the United States Government Accountability Office.
- 688 (2) (a) The office may, in fulfilling the duties under Subsection (1), conduct a
- 689 performance or financial audit of:
- 690 (i) a state executive branch entity or a local government entity, including an entity
- 691 described in Section 63A-13-301, that:
- 692 (A) manages or oversees a state Medicaid program; or
- 693 (B) manages or oversees the use or expenditure of state or federal Medicaid funds; or
- 694 (ii) Medicaid funds received by a person by a grant from, or under contract with, a state
- 695 executive branch entity or a local government entity.
- 696 (b) (i) The office may not, in fulfilling the duties under Subsection (1), amend the state
- 697 Medicaid program or change the policies and procedures of the state Medicaid program.
- 698 (ii) The office shall identify conflicts between the state Medicaid plan, department
- 699 administrative rules, Medicaid provider manuals, and Medicaid information bulletins and
- 700 recommend that the department reconcile inconsistencies. If the department does not reconcile
- 701 the inconsistencies, the office shall report the inconsistencies to the Legislature's

702 Administrative Rules Review and General Oversight Committee created in Section 63G-3-501.

703 (iii) Beginning July 1, 2013, the office shall review a Medicaid provider manual and a
704 Medicaid information bulletin in accordance with Subsection (2)(b)(ii), prior to the department
705 making the provider manual or Medicaid information bulletin available to the public.

706 (c) Beginning July 1, 2013, the Department of Health shall submit a Medicaid provider
707 manual and a Medicaid information bulletin to the office for the review required by Subsection
708 (2)(b)(ii) prior to releasing the document to the public. The department and the Office of
709 Inspector General of Medicaid Services shall enter into a memorandum of understanding
710 regarding the timing of the review process under Subsection (2)(b)(iii).

711 (3) (a) The office shall, in fulfilling the duties under this section to investigate,
712 discover, and recover fraud, waste, and abuse in the Medicaid program, apply the state
713 Medicaid plan, department administrative rules, Medicaid provider manuals, and Medicaid
714 information bulletins in effect at the time the medical services were provided.

715 (b) A health care provider may rely on the policy interpretation included in a current
716 Medicaid provider manual or a current Medicaid information bulletin that is available to the
717 public.

718 (4) The inspector general of Medicaid services, or a designee of the inspector general
719 of Medicaid services within the office, may take a sworn statement or administer an oath.

720 Section 10. Section 63A-13-305 is amended to read:

721 **63A-13-305. Audit and investigation procedures.**

722 (1) (a) The office shall, in accordance with Section 63A-13-602, adopt administrative
723 rules in consultation with providers and health care professionals subject to audit and
724 investigation under this chapter to establish procedures for audits and investigations that are
725 fair and consistent with the duties of the office under this chapter.

726 (b) If the providers and health care professionals do not agree with the rules proposed
727 or adopted by the office under Subsection (1)(a) or Section 63A-13-602, the providers or health
728 care professionals may:

729 (i) request a hearing for the proposed administrative rule or seek any other remedies

730 under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

731 (ii) request a review of the rule by the Legislature's Administrative Rules Review and
732 General Oversight Committee created in Section [63G-3-501](#).

733 (2) The office shall notify and educate providers and health care professionals subject
734 to audit and investigation under this chapter of the providers' and health care professionals'
735 responsibilities and rights under the administrative rules adopted by the office under the
736 provisions of this section and Section [63A-13-602](#).

737 Section 11. Section **63C-9-403** is amended to read:

738 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

739 (1) As used in this section:

740 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
741 related to a single project.

742 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

743 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
744 "operative" who:

745 (i) works at least 30 hours per calendar week; and

746 (ii) meets employer eligibility waiting requirements for health care insurance, which
747 may not exceed the first of the calendar month following 60 days after the day on which the
748 individual is hired.

749 (d) "Health benefit plan" means:

750 (i) the same as that term is defined in Section [31A-1-301](#); or

751 (ii) an employee welfare benefit plan:

752 (A) established under the Employee Retirement Income Security Act of 1974, 29
753 U.S.C. Sec. 1001 et seq.;

754 (B) for an employer with 100 or more employees; and

755 (C) in which the employer establishes a self-funded or partially self-funded group
756 health plan to provide medical care for the employer's employees and dependents of the
757 employees.

758 (e) "Qualified health coverage" means the same as that term is defined in Section
759 26-40-115.

760 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

761 (g) "Third party administrator" or "administrator" means the same as that term is
762 defined in Section 31A-1-301.

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

764 (a) a contractor of a design or construction contract entered into by the board, or on
765 behalf of the board, on or after July 1, 2009, if the prime contract is in an aggregate amount
766 equal to or greater than \$2,000,000; and

767 (b) a subcontractor of a contractor of a design or construction contract entered into by
768 the board, or on behalf of the board, on or after July 1, 2009, if the subcontract is in an
769 aggregate amount equal to or greater than \$1,000,000.

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

772 (a) the application of this section jeopardizes the receipt of federal funds;

773 (b) the contract is a sole source contract; or

774 (c) the contract is an emergency procurement.

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

777 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
778 executive director that the contractor has and will maintain an offer of qualified health
779 coverage for the contractor's employees and the employees' dependents during the duration of
780 the contract by submitting to the executive director a written statement that:

781 (i) the contractor offers qualified health coverage that complies with Section
782 26-40-115;

783 (ii) is from:

784 (A) an actuary selected by the contractor or the contractor's insurer;

785 (B) an underwriter who is responsible for developing the employer group's premium

786 rates; or

787 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
788 an actuary or underwriter selected by a third party administrator; and

789 (iii) was created within one year before the day on which the statement is submitted.

790 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
791 shall provide the actuary or underwriter selected by the administrator, as described in
792 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
793 contribution to the health benefit plan and the health benefit plan's actuarial value meets the
794 requirements of qualified health coverage.

795 (ii) A contractor may not make a change to the contractor's contribution to the health
796 benefit plan, unless the contractor provides notice to:

797 (A) the actuary or underwriter selected by the administrator, as described in Subsection
798 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
799 Subsection (5)(a) in compliance with this section; and

800 (B) the executive director.

801 (c) A contractor that is subject to the requirements of this section shall:

802 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
803 is subject to the requirements of this section shall obtain and maintain an offer of qualified
804 health coverage for the subcontractor's employees and the employees' dependents during the
805 duration of the subcontract; and

806 (ii) obtain from a subcontractor that is subject to the requirements of this section a
807 written statement that:

808 (A) the subcontractor offers qualified health coverage that complies with Section
809 [26-40-115](#);

810 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
811 underwriter who is responsible for developing the employer group's premium rates, or if the
812 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
813 underwriter selected by an administrator; and

814 (C) was created within one year before the day on which the contractor obtains the
815 statement.

816 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage as
817 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
818 accordance with administrative rules adopted by the division under Subsection (6).

819 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
820 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

821 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
822 coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to
823 penalties in accordance with administrative rules adopted by the department under Subsection
824 (6).

825 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
826 an offer of qualified health coverage described in Subsection (5)(a).

827 (6) The department shall adopt administrative rules:

828 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

829 (b) in coordination with:

830 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

831 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

832 (iii) the State Building Board in accordance with Section 63A-5b-607;

833 (iv) a public transit district in accordance with Section 17B-2a-818.5;

834 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

835 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;

836 and

837 (c) that establish:

838 (i) the requirements and procedures a contractor and a subcontractor shall follow to
839 demonstrate compliance with this section, including:

840 (A) that a contractor or subcontractor's compliance with this section is subject to an
841 audit by the department or the Office of the Legislative Auditor General;

842 (B) that a contractor that is subject to the requirements of this section shall obtain a
843 written statement described in Subsection (5)(a); and

844 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
845 written statement described in Subsection (5)(c)(ii);

846 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
847 violates the provisions of this section, which may include:

848 (A) a three-month suspension of the contractor or subcontractor from entering into
849 future contracts with the state upon the first violation;

850 (B) a six-month suspension of the contractor or subcontractor from entering into future
851 contracts with the state upon the second violation;

852 (C) an action for debarment of the contractor or subcontractor in accordance with
853 Section [63G-6a-904](#) upon the third or subsequent violation; and

854 (D) monetary penalties which may not exceed 50% of the amount necessary to
855 purchase qualified health coverage for employees and dependents of employees of the
856 contractor or subcontractor who were not offered qualified health coverage during the duration
857 of the contract; and

858 (iii) a website on which the department shall post the commercially equivalent
859 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by
860 the Department of Health, in accordance with Subsection [26-40-115](#)(2).

861 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
862 or subcontractor who intentionally violates the provisions of this section is liable to the
863 employee for health care costs that would have been covered by qualified health coverage.

864 (ii) An employer has an affirmative defense to a cause of action under Subsection
865 (7)(a)(i) if:

866 (A) the employer relied in good faith on a written statement described in Subsection
867 (5)(a) or (5)(c)(ii); or

868 (B) the department determines that compliance with this section is not required under
869 the provisions of Subsection (3).

870 (b) An employee has a private right of action only against the employee's employer to
871 enforce the provisions of this Subsection (7).

872 (8) Any penalties imposed and collected under this section shall be deposited into the
873 Medicaid Restricted Account created in Section 26-18-402.

874 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
875 required by this section:

876 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
877 or contractor under:

878 (i) Section 63G-6a-1602; or

879 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

880 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
881 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
882 or construction.

883 (10) An administrator, including the administrator's actuary or underwriter, who
884 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
885 coverage of a contractor or subcontractor who provides a health benefit plan described in
886 Subsection (1)(d)(ii):

887 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
888 unless the administrator commits gross negligence in preparing the written statement;

889 (b) is not liable for any error in the written statement if the administrator relied in good
890 faith on information from the contractor or subcontractor; and

891 (c) may require as a condition of providing the written statement that a contractor or
892 subcontractor hold the administrator harmless for an action arising under this section.

893 Section 12. Section 63G-3-301 is amended to read:

894 **63G-3-301. Rulemaking procedure.**

895 (1) An agency authorized to make rules is also authorized to amend or repeal those
896 rules.

897 (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making,

898 amending, or repealing a rule agencies shall comply with:

- 899 (a) the requirements of this section;
- 900 (b) consistent procedures required by other statutes;
- 901 (c) applicable federal mandates; and
- 902 (d) rules made by the office to implement this chapter.

903 (3) Subject to the requirements of this chapter, each agency shall develop and use
904 flexible approaches in drafting rules that meet the needs of the agency and that involve persons
905 affected by the agency's rules.

906 (4) (a) Each agency shall file the agency's proposed rule and rule analysis with the
907 office.

908 (b) Rule amendments shall be marked with new language underlined and deleted
909 language struck out.

910 (c) (i) The office shall publish the information required under Subsection (8) on the
911 rule analysis and the text of the proposed rule in the next issue of the bulletin.

912 (ii) For rule amendments, only the section or subsection of the rule being amended
913 need be printed.

914 (iii) If the director determines that the rule is too long to publish, the office shall
915 publish the rule analysis and shall publish the rule by reference to a copy on file with the office.

916 (5) Before filing a rule with the office, the agency shall conduct a thorough analysis,
917 consistent with the criteria established by the Governor's Office of Planning and Budget, of the
918 fiscal impact a rule may have on businesses, which criteria may include:

919 (a) the type of industries that will be impacted by the rule, and for each identified
920 industry, an estimate of the total number of businesses within the industry, and an estimate of
921 the number of those businesses that are small businesses;

922 (b) the individual fiscal impact that would incur to a typical business for a one-year
923 period;

924 (c) the aggregated total fiscal impact that would incur to all businesses within the state
925 for a one-year period;

926 (d) the total cost that would incur to all impacted entities over a five-year period; and

927 (e) the department head's comments on the analysis.

928 (6) If the agency reasonably expects that a proposed rule will have a measurable
929 negative fiscal impact on small businesses, the agency shall consider, as allowed by federal
930 law, each of the following methods of reducing the impact of the rule on small businesses:

931 (a) establishing less stringent compliance or reporting requirements for small
932 businesses;

933 (b) establishing less stringent schedules or deadlines for compliance or reporting
934 requirements for small businesses;

935 (c) consolidating or simplifying compliance or reporting requirements for small
936 businesses;

937 (d) establishing performance standards for small businesses to replace design or
938 operational standards required in the proposed rule; and

939 (e) exempting small businesses from all or any part of the requirements contained in
940 the proposed rule.

941 (7) If during the public comment period an agency receives comment that the proposed
942 rule will cost small business more than one day's annual average gross receipts, and the agency
943 had not previously performed the analysis in Subsection (6), the agency shall perform the
944 analysis described in Subsection (6).

945 (8) The rule analysis shall contain:

946 (a) a summary of the rule or change;

947 (b) the purpose of the rule or reason for the change;

948 (c) the statutory authority or federal requirement for the rule;

949 (d) the anticipated cost or savings to:

950 (i) the state budget;

951 (ii) local governments;

952 (iii) small businesses; and

953 (iv) persons other than small businesses, businesses, or local governmental entities;

- 954 (e) the compliance cost for affected persons;
- 955 (f) how interested persons may review the full text of the rule;
- 956 (g) how interested persons may present their views on the rule;
- 957 (h) the time and place of any scheduled public hearing;
- 958 (i) the name and telephone number of an agency employee who may be contacted
959 about the rule;
- 960 (j) the name of the agency head or designee who authorized the rule;
- 961 (k) the date on which the rule may become effective following the public comment
962 period;
- 963 (l) the agency's analysis on the fiscal impact of the rule as required under Subsection
964 (5);
- 965 (m) any additional comments the department head may choose to submit regarding the
966 fiscal impact the rule may have on businesses; and
- 967 (n) if applicable, a summary of the agency's efforts to comply with the requirements of
968 Subsection (6).
- 969 (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
970 summary that generally includes the following:
- 971 (i) a summary of substantive provisions in the repealed rule which are eliminated from
972 the enacted rule; and
- 973 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 974 (b) The summary required under this Subsection (9) is to aid in review and may not be
975 used to contest any rule on the ground of noncompliance with the procedural requirements of
976 this chapter.
- 977 (10) A copy of the rule analysis shall be mailed to all persons who have made timely
978 request of the agency for advance notice of the agency's rulemaking proceedings and to any
979 other person who, by statutory or federal mandate or in the judgment of the agency, should also
980 receive notice.
- 981 (11) (a) Following the publication date, the agency shall allow at least 30 days for

982 public comment on the rule.

983 (b) The agency shall review and evaluate all public comments submitted in writing
984 within the time period under Subsection (11)(a) or presented at public hearings conducted by
985 the agency within the time period under Subsection (11)(a).

986 (12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule
987 becomes effective on any date specified by the agency that is:

988 (i) no fewer than seven calendar days after the day on which the public comment
989 period closes under Subsection (11); and

990 (ii) no more than 120 days after the day on which the rule is published.

991 (b) The agency shall provide notice of the rule's effective date to the office in the form
992 required by the office.

993 (c) The notice of effective date may not provide for an effective date before the day on
994 which the office receives the notice.

995 (d) The office shall publish notice of the effective date of the rule in the next issue of
996 the bulletin.

997 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is
998 not filed with the office within 120 days after the day on which the rule is published.

999 (13) (a) Except as provided in Subsection (13)(d), before an agency enacts a rule, the
1000 agency shall submit to the appropriations subcommittee and interim committee with
1001 jurisdiction over the agency the agency's proposed rule for review, if the proposed rule, over a
1002 three-year period, has a fiscal impact of more than:

1003 (i) \$250,000 to a single person; or

1004 (ii) \$7,500,000 to a group of persons.

1005 (b) An appropriations subcommittee or interim committee that reviews a rule
1006 submitted under Subsection (13)(a) shall:

1007 (i) before the review, directly inform the chairs of the Administrative Rules Review
1008 and General Oversight Committee of the coming review, including the date, time, and place of
1009 the review; and

1010 (ii) after the review, directly inform the chairs of the Administrative Rules Review and
1011 General Oversight Committee of the outcome of the review, including any recommendation.

1012 (c) An appropriations subcommittee or interim committee that reviews a rule submitted
1013 under Subsection (13)(a) may recommend to the Administrative Rules Review and General
1014 Oversight Committee that the Administrative Rules Review and General Oversight Committee
1015 not recommend reauthorization of the rule in the omnibus legislation described in Section
1016 63G-3-502.

1017 (d) The requirement described in Subsection (13)(a) does not apply to:

1018 (i) the State Tax Commission; or

1019 (ii) the State Board of Education.

1020 (14) (a) As used in this Subsection (14), "initiate rulemaking proceedings" means the
1021 filing, for the purposes of publication in accordance with Subsection (4), of an agency's
1022 proposed rule that is required by state statute.

1023 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the
1024 day on which the statutory provision that specifically requires the rulemaking takes effect,
1025 except under Subsection (14)(c).

1026 (c) When a statute is enacted that requires agency rulemaking and the affected agency
1027 already has rules in place that meet the statutory requirement, the agency shall submit the rules
1028 to the Administrative Rules Review and General Oversight Committee for review within 60
1029 days after the day on which the statute requiring the rulemaking takes effect.

1030 (d) If a state agency does not initiate rulemaking proceedings in accordance with the
1031 time requirements in Subsection (14)(b), the state agency shall appear before the legislative
1032 Administrative Rules Review and General Oversight Committee and provide the reasons for
1033 the delay.

1034 Section 13. Section 63G-3-304 is amended to read:

1035 **63G-3-304. Emergency rulemaking procedure.**

1036 (1) All agencies shall comply with the rulemaking procedures of Section 63G-3-301
1037 unless an agency finds that these procedures would:

1038 (a) cause an imminent peril to the public health, safety, or welfare;
1039 (b) cause an imminent budget reduction because of budget restraints or federal
1040 requirements; or
1041 (c) place the agency in violation of federal or state law.
1042 (2) (a) When finding that its rule is excepted from regular rulemaking procedures by
1043 this section, the agency shall file with the office and the members of the Administrative Rules
1044 Review and General Oversight Committee:
1045 (i) the text of the rule; and
1046 (ii) a rule analysis that includes the specific reasons and justifications for its findings.
1047 (b) The office shall publish the rule in the bulletin as provided in Subsection
1048 [63G-3-301](#)(4).
1049 (c) The agency shall notify interested persons as provided in Subsection
1050 [63G-3-301](#)(10).
1051 (d) Subject to Subsection [63G-3-502](#)(4), the rule becomes effective for a period not
1052 exceeding 120 days on the date of filing or any later date designated in the rule.
1053 (3) If the agency intends the rule to be effective beyond 120 days, the agency shall also
1054 comply with the procedures of Section [63G-3-301](#).
1055 Section 14. Section [63G-3-402](#) is amended to read:
1056 **[63G-3-402. Office of Administrative Rules -- Duties generally.](#)**
1057 (1) The office shall:
1058 (a) record in a register the receipt of all agency rules, rule analysis forms, and notices
1059 of effective dates;
1060 (b) make the register, copies of all proposed rules, and rulemaking documents available
1061 for public inspection;
1062 (c) publish all proposed rules, rule analyses, notices of effective dates, and review
1063 notices in the bulletin at least monthly, except that the office may publish the complete text of
1064 any proposed rule that the director determines is too long to print or too expensive to publish
1065 by reference to the text maintained by the office;

- 1066 (d) compile, format, number, and index all effective rules in an administrative code,
1067 and periodically publish that code and supplements or revisions to it;
- 1068 (e) publish a digest of all rules and notices contained in the most recent bulletin;
- 1069 (f) publish at least annually an index of all changes to the administrative code and the
1070 effective date of each change;
- 1071 (g) print, or contract to print, all rulemaking publications the director determines
1072 necessary to implement this chapter;
- 1073 (h) distribute without charge the bulletin and administrative code to state-designated
1074 repositories, the Administrative Rules Review and General Oversight Committee, the Office of
1075 Legislative Research and General Counsel, and the two houses of the Legislature;
- 1076 (i) distribute without charge the digest and index to state legislators, agencies, political
1077 subdivisions on request, and the Office of Legislative Research and General Counsel;
- 1078 (j) distribute, at prices covering publication costs, all paper rulemaking publications to
1079 all other requesting persons and agencies;
- 1080 (k) provide agencies assistance in rulemaking;
- 1081 (l) if the department operates the office as an internal service fund agency in
1082 accordance with Section [63A-1-109.5](#), submit to the Rate Committee established in Section
1083 [63A-1-114](#):
- 1084 (i) the proposed rate and fee schedule as required by Section [63A-1-114](#); and
1085 (ii) other information or analysis requested by the Rate Committee;
- 1086 (m) administer this chapter and require state agencies to comply with filing,
1087 publication, and hearing procedures; and
- 1088 (n) make technological improvements to the rulemaking process, including
1089 improvements to automation and digital accessibility.
- 1090 (2) The office shall establish by rule in accordance with Title 63G, Chapter 3, Utah
1091 Administrative Rulemaking Act, all filing, publication, and hearing procedures necessary to
1092 make rules under this chapter.
- 1093 (3) The office may after notifying the agency make nonsubstantive changes to rules

1094 filed with the office or published in the bulletin or code by:

1095 (a) implementing a uniform system of formatting, punctuation, capitalization,
1096 organization, numbering, and wording;

1097 (b) correcting obvious errors and inconsistencies in punctuation, capitalization,
1098 numbering, referencing, and wording;

1099 (c) changing a catchline to more accurately reflect the substance of each section, part,
1100 rule, or title;

1101 (d) updating or correcting annotations associated with a section, part, rule, or title; and

1102 (e) merging or determining priority of any amendment, enactment, or repeal to the
1103 same rule or section made effective by an agency.

1104 (4) In addition, the office may make the following nonsubstantive changes with the
1105 concurrence of the agency:

1106 (a) eliminate duplication within rules;

1107 (b) eliminate obsolete and redundant words; and

1108 (c) correct defective or inconsistent section and paragraph structure in arrangement of
1109 the subject matter of rules.

1110 (5) For nonsubstantive changes made in accordance with Subsection (3) or (4) after
1111 publication of the rule in the bulletin, the office shall publish a list of nonsubstantive changes
1112 in the bulletin. For each nonsubstantive change, the list shall include:

1113 (a) the affected code citation;

1114 (b) a brief description of the change; and

1115 (c) the date the change was made.

1116 (6) All funds appropriated or collected for publishing the office's publications shall be
1117 nonlapsing.

1118 Section 15. Section **63G-3-403** is amended to read:

1119 **63G-3-403. Repeal and reenactment of Utah Administrative Code.**

1120 (1) When the director determines that the Utah Administrative Code requires extensive
1121 revision and reorganization, the office may repeal the code and reenact a new code according to

1122 the requirements of this section.

1123 (2) The office may:

1124 (a) reorganize, reformat, and renumber the code;

1125 (b) require each agency to review its rules and make any organizational or substantive
1126 changes according to the requirements of Section [63G-3-303](#); and

1127 (c) require each agency to prepare a brief summary of all substantive changes made by
1128 the agency.

1129 (3) The office may make nonsubstantive changes in the code by:

1130 (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;

1131 (b) eliminating duplication;

1132 (c) correcting defective or inconsistent section and paragraph structure in arrangement
1133 of the subject matter of rules;

1134 (d) eliminating all obsolete or redundant words;

1135 (e) correcting obvious errors and inconsistencies in punctuation, capitalization,
1136 numbering, referencing, and wording;

1137 (f) changing a catchline to more accurately reflect the substance of each section, part,
1138 rule, or title;

1139 (g) updating or correcting annotations associated with a section, part, rule, or title; and

1140 (h) merging or determining priority of any amendment, enactment, or repeal to the
1141 same rule or section made effective by an agency.

1142 (4) (a) To inform the public about the proposed code reenactment, the office shall
1143 publish in the bulletin:

1144 (i) notice of the code reenactment;

1145 (ii) the date, time, and place of a public hearing where members of the public may
1146 comment on the proposed reenactment of the code;

1147 (iii) locations where the proposed reenactment of the code may be reviewed; and

1148 (iv) agency summaries of substantive changes in the reenacted code.

1149 (b) To inform the public about substantive changes in agency rules contained in the

1150 proposed reenactment, each agency shall:

1151 (i) make the text of their reenacted rules available:

1152 (A) for public review during regular business hours; and

1153 (B) in an electronic version; and

1154 (ii) comply with the requirements of Subsection [63G-3-301\(10\)](#).

1155 (5) The office shall hold a public hearing on the proposed code reenactment no fewer
1156 than 30 days nor more than 45 days after the publication required by Subsection (4)(a).

1157 (6) The office shall distribute complete text of the proposed code reenactment without
1158 charge to:

1159 (a) state-designated repositories in Utah;

1160 (b) the Administrative Rules Review and General Oversight Committee; and

1161 (c) the Office of Legislative Research and General Counsel.

1162 (7) The former code is repealed and the reenacted code is effective at noon on a date
1163 designated by the office that is not fewer than 45 days nor more than 90 days after the
1164 publication date required by this section.

1165 (8) Repeal and reenactment of the code meets the requirements of Section [63G-3-305](#)
1166 for a review of all agency rules.

1167 Section 16. Section **63G-3-501** is amended to read:

1168 **63G-3-501. Administrative Rules Review and General Oversight Committee.**

1169 (1) (a) There is created an Administrative Rules Review and General Oversight
1170 Committee of the following 10 permanent members:

1171 (i) five members of the Senate appointed by the president of the Senate, no more than
1172 three of whom may be from the same political party; and

1173 (ii) five members of the House of Representatives appointed by the speaker of the
1174 House of Representatives, no more than three of whom may be from the same political party.

1175 (b) Each permanent member shall serve:

1176 (i) for a two-year term; or

1177 (ii) until the permanent member's successor is appointed.

1178 (c) (i) A vacancy exists when a permanent member ceases to be a member of the
1179 Legislature, or when a permanent member resigns from the committee.

1180 (ii) When a vacancy exists:

1181 (A) if the departing member is a member of the Senate, the president of the Senate
1182 shall appoint a member of the Senate to fill the vacancy; or

1183 (B) if the departing member is a member of the House of Representatives, the speaker
1184 of the House of Representatives shall appoint a member of the House of Representatives to fill
1185 the vacancy.

1186 (iii) The newly appointed member shall serve the remainder of the departing member's
1187 unexpired term.

1188 (d) (i) The president of the Senate shall designate a member of the Senate appointed
1189 under Subsection (1)(a)(i) as a cochair of the committee.

1190 (ii) The speaker of the House of Representatives shall designate a member of the
1191 House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.

1192 (e) Three representatives and three senators from the permanent members are a quorum
1193 for the transaction of business at any meeting.

1194 (f) (i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each
1195 month to review new agency rules, amendments to existing agency rules, and repeals of
1196 existing agency rules.

1197 (ii) The committee chairs may suspend the meeting requirement described in
1198 Subsection (1)(f)(i) at the committee chairs' discretion.

1199 (2) The office shall submit a copy of each issue of the bulletin to the committee.

1200 (3) (a) The committee shall exercise continuous oversight of the rulemaking process.

1201 (b) The committee shall examine each rule, including any rule made according to the
1202 emergency rulemaking procedure described in Section [63G-3-304](#), submitted by an agency to
1203 determine:

1204 (i) whether the rule is authorized by statute;

1205 (ii) whether the rule complies with legislative intent;

- 1206 (iii) the rule's impact on the economy and the government operations of the state and
1207 local political subdivisions;
- 1208 (iv) the rule's impact on affected persons;
- 1209 (v) the rule's total cost to entities regulated by the state;
- 1210 (vi) the rule's benefit to the citizens of the state; and
- 1211 (vii) whether adoption of the rule requires legislative review or approval.
- 1212 (c) The committee may examine and review:
- 1213 (i) any executive order issued pursuant to Title 53, Chapter 2a, Part 2, Disaster
1214 Response and Recovery Act; ~~[or]~~
- 1215 (ii) any public health order issued during a public health emergency declared in
1216 accordance with Title 26, Utah Health Code, or Title 26A, Local Health Authorities~~[-];~~ or
- 1217 (iii) an agency's policies that:
- 1218 (A) affect a class of persons other than the agency; or
- 1219 (B) are contrary to legislative intent.
- 1220 (d) (i) To carry out these duties, the committee may examine any other issues that the
1221 committee considers necessary.
- 1222 (ii) Notwithstanding anything to the contrary in this section, the committee may not
1223 examine an agency's internal policies, procedures, or practices.
- 1224 ~~[(ii)]~~ (iii) The committee may also notify and refer rules to the chairs of the interim
1225 committee that has jurisdiction over a particular agency when the committee determines that an
1226 issue involved in an agency's rules may be more appropriately addressed by that committee.
- 1227 (e) An agency shall respond to a request from the committee for:
- 1228 (i) an agency's policy described in Subsection (3)(c)(iii); or
- 1229 (ii) information related to an agency's policy described in Subsection (3)(c)(iii).
- 1230 ~~[(e)]~~ (f) In reviewing a rule, the committee shall follow generally accepted principles of
1231 statutory construction.
- 1232 (4) When the committee reviews an existing rule, the committee chairs shall invite the
1233 Senate and House chairs of the standing committee and of the appropriation subcommittee that

1234 have jurisdiction over the agency whose existing rule is being reviewed to participate as
1235 nonvoting, ex officio members with the committee.

1236 (5) The committee may request that the Office of the Legislative Fiscal Analyst prepare
1237 a fiscal note on any rule.

1238 (6) In order to accomplish the committee's functions described in this chapter, the
1239 committee has all the powers granted to legislative interim committees under Section 36-12-11.

1240 (7) (a) The committee may prepare written findings of the committee's review of a rule
1241 [~~or~~], policy, practice, or procedure and may include any recommendation, including:

1242 (i) legislative action; or

1243 (ii) action by a standing committee or interim committee.

1244 (b) When the committee reviews a rule, the committee shall provide to the agency that
1245 enacted the rule:

1246 (i) the committee's findings, if any; and

1247 (ii) a request that the agency notify the committee of any changes the agency makes to
1248 the rule.

1249 (c) The committee shall provide a copy of the committee's findings described in
1250 Subsection (7)(a), if any, to:

1251 (i) any member of the Legislature, upon request;

1252 (ii) any person affected by the rule, upon request;

1253 (iii) the president of the Senate;

1254 (iv) the speaker of the House of Representatives;

1255 (v) the Senate and House chairs of the standing committee that has jurisdiction over the
1256 agency [~~that made the rule~~] whose rule, policy, practice, or procedure is the subject of the
1257 finding; and

1258 (vi) the Senate and House chairs of the appropriation subcommittee that has
1259 jurisdiction over the agency that made the rule.

1260 (8) (a) (i) The committee may submit a report on the committee's review [~~of state~~
1261 ~~agency rules~~] under this section to each member of the Legislature at each regular session.

- 1262 (ii) The report shall include:
- 1263 (A) any finding or recommendation the committee made under Subsection (7);
- 1264 (B) any action an agency took in response to a committee recommendation; and
- 1265 (C) any recommendation by the committee for legislation.

1266 (b) If the committee receives a recommendation not to reauthorize a rule, as described
1267 in Subsection [63G-3-301\(13\)\(b\)](#), and the committee recommends to the Legislature
1268 reauthorization of the rule, the committee shall submit a report to each member of the
1269 Legislature detailing the committee's decision.

1270 (c) If the committee recommends legislation, the committee may prepare legislation for
1271 consideration by the Legislature at the next general session.

1272 Section 17. Section **63G-3-502** is amended to read:

1273 **63G-3-502. Legislative reauthorization of agency rules -- Extension of rules by**
1274 **governor.**

1275 (1) All grants of rulemaking power from the Legislature to a state agency in any statute
1276 are made subject to the provisions of this section.

1277 (2) (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on
1278 February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized
1279 by the Legislature.

1280 (b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire
1281 if:

- 1282 (i) the rule is explicitly mandated by a federal law or regulation; or
- 1283 (ii) a provision of Utah's constitution vests the agency with specific constitutional
1284 authority to regulate.

1285 (3) (a) The Administrative Rules Review and General Oversight Committee shall have
1286 omnibus legislation prepared for consideration by the Legislature during its annual general
1287 session.

1288 (b) The omnibus legislation shall be substantially in the following form: "All rules of
1289 Utah state agencies are reauthorized except for the following:".

1290 (c) Before sending the legislation to the governor for the governor's action, the
1291 Administrative Rules Review and General Oversight Committee may send a letter to the
1292 governor and to the agency explaining specifically why the committee believes any rule should
1293 not be reauthorized.

1294 (d) For the purpose of this section, the entire rule, a single section, or any complete
1295 paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered
1296 by the Legislature.

1297 (4) [~~(a)~~] The Administrative Rules Review and General Oversight Committee may
1298 have legislation prepared for consideration by the Legislature in the annual general session or a
1299 special session regarding any rule made according to emergency rulemaking procedures
1300 described in Section [63G-3-304](#).

1301 (5) The Legislature's reauthorization of a rule by legislation does not constitute
1302 legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative
1303 intent.

1304 (6) (a) If an agency believes that a rule that has not been reauthorized by the
1305 Legislature or that will be allowed to expire should continue in full force and effect and is a
1306 rule within their authorized rulemaking power, the agency may seek the governor's declaration
1307 extending the rule beyond the expiration date.

1308 (b) In seeking the extension, the agency shall submit a petition to the governor that
1309 affirmatively states:

- 1310 (i) that the rule is necessary; and
- 1311 (ii) a citation to the source of its authority to make the rule.

1312 (c) (i) If the governor finds that the necessity does exist, and that the agency has the
1313 authority to make the rule, the governor may declare the rule to be extended by publishing that
1314 declaration in the Administrative Rules Bulletin on or before April 15 of that year.

1315 (ii) The declaration shall set forth the rule to be extended, the reasons the extension is
1316 necessary, and a citation to the source of the agency's authority to make the rule.

1317 (d) If the omnibus bill required by Subsection (3) fails to pass both houses of the

1318 Legislature or is found to have a technical legal defect preventing reauthorization of
1319 administrative rules intended to be reauthorized by the Legislature, the governor may declare
1320 all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin
1321 on or before June 15 without meeting requirements of Subsections (6)(b) and (c).

1322 Section 18. Section **63N-6-203** is amended to read:

1323 **63N-6-203. Board duties and powers.**

1324 (1) The board shall, by rule:

1325 (a) establish criteria and procedures for the allocation and issuance of contingent tax
1326 credits to designated investors by means of certificates issued by the board;

1327 (b) establish criteria and procedures for assessing the likelihood of future certificate
1328 redemptions by designated investors, including:

1329 (i) criteria and procedures for evaluating the value of investments made by the Utah
1330 fund of funds; and

1331 (ii) the returns from the Utah fund of funds;

1332 (c) establish criteria and procedures for issuing, calculating, registering, and redeeming
1333 contingent tax credits by designated investors holding certificates issued by the board;

1334 (d) establish a target rate of return or range of returns for the investment portfolio of
1335 the Utah fund of funds;

1336 (e) establish criteria and procedures governing commitments obtained by the board
1337 from designated purchasers including:

1338 (i) entering into commitments with designated purchasers; and

1339 (ii) drawing on commitments to redeem certificates from designated investors;

1340 (f) have power to:

1341 (i) expend funds;

1342 (ii) invest funds;

1343 (iii) issue debt and borrow funds;

1344 (iv) enter into contracts;

1345 (v) insure against loss; and

- 1346 (vi) perform any other act necessary to carry out its purpose; and
- 1347 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
- 1348 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1349 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the
- 1350 Legislative Management Committee:
- 1351 (i) whenever made, modified, or repealed; and
- 1352 (ii) in each even-numbered year.
- 1353 (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review
- 1354 and General Oversight Committee from reviewing and taking appropriate action on any rule
- 1355 made, amended, or repealed by the board.
- 1356 (3) (a) The criteria and procedures established by the board for the allocation and
- 1357 issuance of contingent tax credits shall include the contingencies that must be met for a
- 1358 certificate and its related tax credits to be:
- 1359 (i) issued by the board;
- 1360 (ii) transferred by a designated investor; and
- 1361 (iii) redeemed by a designated investor in order to receive a contingent tax credit.
- 1362 (b) The board shall tie the contingencies for redemption of certificates to:
- 1363 (i) for a private investment initiated before July 1, 2015:
- 1364 (A) the targeted rates of return and scheduled redemptions of equity interests purchased
- 1365 by designated investors in the Utah fund of funds; and
- 1366 (B) the scheduled principal and interest payments payable to designated investors that
- 1367 have made loans initiated before July 1, 2014, including a loan refinanced one or more times
- 1368 on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds; or
- 1369 (ii) for an equity-based private investment initiated on or after July 1, 2015, the
- 1370 positive impact on economic development in the state that is related to the fund's investments
- 1371 or the success of the corporation's economic development plan in the state, including:
- 1372 (A) encouraging the availability of a wide variety of venture capital in the state;
- 1373 (B) strengthening the state's economy;

- 1374 (C) helping business in the state gain access to sources of capital;
- 1375 (D) helping build a significant, permanent source of capital available for businesses in
- 1376 the state; and
- 1377 (E) creating benefits for the state while minimizing the use of contingent tax credits.
- 1378 (4) (a) The board may charge a placement fee to the Utah fund of funds for the
- 1379 issuance of a certificate and related contingent tax credit to a designated investor.
- 1380 (b) The fee shall:
- 1381 (i) be charged only to pay for reasonable and necessary costs of the board; and
- 1382 (ii) not exceed .5% of the private investment of the designated investor.
- 1383 (5) The board's criteria and procedures for redeeming certificates:
- 1384 (a) shall give priority to the redemption amount from the available funds in the
- 1385 redemption reserve; and
- 1386 (b) to the extent there are insufficient funds in the redemption reserve to redeem
- 1387 certificates, shall grant the board the option to redeem certificates:
- 1388 (i) by certifying a contingent tax credit to the designated investor; or
- 1389 (ii) by making demand on designated purchasers consistent with the requirements of
- 1390 Section [63N-6-409](#).
- 1391 Section 19. Section **72-6-107.5** is amended to read:
- 1392 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
- 1393 **insurance coverage.**
- 1394 (1) As used in this section:
- 1395 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
- 1396 related to a single project.
- 1397 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).
- 1398 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
- 1399 "operative" who:
- 1400 (i) works at least 30 hours per calendar week; and
- 1401 (ii) meets employer eligibility waiting requirements for health care insurance, which

1402 may not exceed the first day of the calendar month following 60 days after the day on which
1403 the individual is hired.

1404 (d) "Health benefit plan" means:

1405 (i) the same as that term is defined in Section [31A-1-301](#); or

1406 (ii) an employee welfare benefit plan:

1407 (A) established under the Employee Retirement Income Security Act of 1974, 29
1408 U.S.C. Sec. 1001 et seq.;

1409 (B) for an employer with 100 or more employees; and

1410 (C) in which the employer establishes a self-funded or partially self-funded group
1411 health plan to provide medical care for the employer's employees and dependents of the
1412 employees.

1413 (e) "Qualified health coverage" means the same as that term is defined in Section
1414 [26-40-115](#).

1415 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).

1416 (g) "Third party administrator" or "administrator" means the same as that term is
1417 defined in Section [31A-1-301](#).

1418 (2) Except as provided in Subsection (3), the requirements of this section apply to:

1419 (a) a contractor of a design or construction contract entered into by the department on
1420 or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than
1421 \$2,000,000; and

1422 (b) a subcontractor of a contractor of a design or construction contract entered into by
1423 the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or
1424 greater than \$1,000,000.

1425 (3) The requirements of this section do not apply to a contractor or subcontractor
1426 described in Subsection (2) if:

1427 (a) the application of this section jeopardizes the receipt of federal funds;

1428 (b) the contract is a sole source contract; or

1429 (c) the contract is an emergency procurement.

1430 (4) A person that intentionally uses change orders, contract modifications, or multiple
1431 contracts to circumvent the requirements of this section is guilty of an infraction.

1432 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
1433 department that the contractor has and will maintain an offer of qualified health coverage for
1434 the contractor's employees and the employees' dependents during the duration of the contract
1435 by submitting to the department a written statement that:

1436 (i) the contractor offers qualified health coverage that complies with Section
1437 [26-40-115](#);

1438 (ii) is from:

1439 (A) an actuary selected by the contractor or the contractor's insurer;

1440 (B) an underwriter who is responsible for developing the employer group's premium
1441 rates; or

1442 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
1443 an actuary or underwriter selected by a third party administrator; and

1444 (iii) was created within one year before the day on which the statement is submitted.

1445 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
1446 shall provide the actuary or underwriter selected by an administrator, as described in
1447 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
1448 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
1449 requirements of qualified health coverage.

1450 (ii) A contractor may not make a change to the contractor's contribution to the health
1451 benefit plan, unless the contractor provides notice to:

1452 (A) the actuary or underwriter selected by an administrator, as described in Subsection
1453 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
1454 Subsection (5)(a) in compliance with this section; and

1455 (B) the department.

1456 (c) A contractor that is subject to the requirements of this section shall:

1457 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that

1458 is subject to the requirements of this section shall obtain and maintain an offer of qualified
1459 health coverage for the subcontractor's employees and the employees' dependents during the
1460 duration of the subcontract; and

1461 (ii) obtain from a subcontractor that is subject to the requirements of this section a
1462 written statement that:

1463 (A) the subcontractor offers qualified health coverage that complies with Section
1464 [26-40-115](#);

1465 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
1466 underwriter who is responsible for developing the employer group's premium rates, or if the
1467 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
1468 underwriter selected by an administrator; and

1469 (C) was created within one year before the day on which the contractor obtains the
1470 statement.

1471 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage
1472 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
1473 accordance with administrative rules adopted by the department under Subsection (6).

1474 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
1475 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

1476 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
1477 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to
1478 penalties in accordance with administrative rules adopted by the department under Subsection
1479 (6).

1480 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
1481 an offer of qualified health coverage described in Subsection (5)(a).

1482 (6) The department shall adopt administrative rules:

1483 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1484 (b) in coordination with:

1485 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

- 1486 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 1487 (iii) the State Building Board in accordance with Section 63A-5b-607;
- 1488 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 1489 (v) a public transit district in accordance with Section 17B-2a-818.5; and
- 1490 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;
- 1491 and
- 1492 (c) that establish:
- 1493 (i) the requirements and procedures a contractor and a subcontractor shall follow to
- 1494 demonstrate compliance with this section, including:
- 1495 (A) that a contractor or subcontractor's compliance with this section is subject to an
- 1496 audit by the department or the Office of the Legislative Auditor General;
- 1497 (B) that a contractor that is subject to the requirements of this section shall obtain a
- 1498 written statement described in Subsection (5)(a); and
- 1499 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
- 1500 written statement described in Subsection (5)(c)(ii);
- 1501 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
- 1502 violates the provisions of this section, which may include:
- 1503 (A) a three-month suspension of the contractor or subcontractor from entering into
- 1504 future contracts with the state upon the first violation;
- 1505 (B) a six-month suspension of the contractor or subcontractor from entering into future
- 1506 contracts with the state upon the second violation;
- 1507 (C) an action for debarment of the contractor or subcontractor in accordance with
- 1508 Section 63G-6a-904 upon the third or subsequent violation; and
- 1509 (D) monetary penalties which may not exceed 50% of the amount necessary to
- 1510 purchase qualified health coverage for an employee and a dependent of the employee of the
- 1511 contractor or subcontractor who was not offered qualified health coverage during the duration
- 1512 of the contract; and
- 1513 (iii) a website on which the department shall post the commercially equivalent

1514 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by
1515 the Department of Health, in accordance with Subsection 26-40-115(2).

1516 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
1517 or subcontractor who intentionally violates the provisions of this section is liable to the
1518 employee for health care costs that would have been covered by qualified health coverage.

1519 (ii) An employer has an affirmative defense to a cause of action under Subsection
1520 (7)(a)(i) if:

1521 (A) the employer relied in good faith on a written statement described in Subsection
1522 (5)(a) or (5)(c)(ii); or

1523 (B) the department determines that compliance with this section is not required under
1524 the provisions of Subsection (3).

1525 (b) An employee has a private right of action only against the employee's employer to
1526 enforce the provisions of this Subsection (7).

1527 (8) Any penalties imposed and collected under this section shall be deposited into the
1528 Medicaid Restricted Account created in Section 26-18-402.

1529 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
1530 required by this section:

1531 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1532 or contractor under:

1533 (i) Section 63G-6a-1602; or

1534 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

1535 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1536 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1537 or construction.

1538 (10) An administrator, including an administrator's actuary or underwriter, who
1539 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
1540 coverage of a contractor or subcontractor who provides a health benefit plan described in
1541 Subsection (1)(d)(ii):

1542 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
1543 unless the administrator commits gross negligence in preparing the written statement;

1544 (b) is not liable for any error in the written statement if the administrator relied in good
1545 faith on information from the contractor or subcontractor; and

1546 (c) may require as a condition of providing the written statement that a contractor or
1547 subcontractor hold the administrator harmless for an action arising under this section.

1548 Section 20. Section **79-2-404** is amended to read:

1549 **79-2-404. Contracting powers of department -- Health insurance coverage.**

1550 (1) As used in this section:

1551 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
1552 related to a single project.

1553 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

1554 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
1555 "operative" who:

1556 (i) works at least 30 hours per calendar week; and

1557 (ii) meets employer eligibility waiting requirements for health care insurance, which
1558 may not exceed the first day of the calendar month following 60 days after the day on which
1559 the individual is hired.

1560 (d) "Health benefit plan" means:

1561 (i) the same as that term is defined in Section [31A-1-301](#); or

1562 (ii) an employee welfare benefit plan:

1563 (A) established under the Employee Retirement Income Security Act of 1974, 29
1564 U.S.C. Sec. 1001 et seq.;

1565 (B) for an employer with 100 or more employees; and

1566 (C) in which the employer establishes a self-funded or partially self-funded group
1567 health plan to provide medical care for the employer's employees and dependents of the
1568 employees.

1569 (e) "Qualified health coverage" means the same as that term is defined in Section

1570 26-40-115.

1571 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

1572 (g) "Third party administrator" or "administrator" means the same as that term is
1573 defined in Section 31A-1-301.

1574 (2) Except as provided in Subsection (3), the requirements of this section apply to:

1575 (a) a contractor of a design or construction contract entered into by, or delegated to, the
1576 department or a division, board, or council of the department on or after July 1, 2009, if the
1577 prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

1578 (b) a subcontractor of a contractor of a design or construction contract entered into by,
1579 or delegated to, the department or a division, board, or council of the department on or after
1580 July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

1581 (3) This section does not apply to contracts entered into by the department or a
1582 division, board, or council of the department if:

1583 (a) the application of this section jeopardizes the receipt of federal funds;

1584 (b) the contract or agreement is between:

1585 (i) the department or a division, board, or council of the department; and

1586 (ii) (A) another agency of the state;

1587 (B) the federal government;

1588 (C) another state;

1589 (D) an interstate agency;

1590 (E) a political subdivision of this state; or

1591 (F) a political subdivision of another state; or

1592 (c) the contract or agreement is:

1593 (i) for the purpose of disbursing grants or loans authorized by statute;

1594 (ii) a sole source contract; or

1595 (iii) an emergency procurement.

1596 (4) A person that intentionally uses change orders, contract modifications, or multiple
1597 contracts to circumvent the requirements of this section is guilty of an infraction.

1598 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
1599 department that the contractor has and will maintain an offer of qualified health coverage for
1600 the contractor's employees and the employees' dependents during the duration of the contract
1601 by submitting to the department a written statement that:

1602 (i) the contractor offers qualified health coverage that complies with Section
1603 [26-40-115](#);

1604 (ii) is from:

1605 (A) an actuary selected by the contractor or the contractor's insurer;

1606 (B) an underwriter who is responsible for developing the employer group's premium
1607 rates; or

1608 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
1609 an actuary or underwriter selected by a third party administrator; and

1610 (iii) was created within one year before the day on which the statement is submitted.

1611 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
1612 shall provide the actuary or underwriter selected by an administrator, as described in
1613 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
1614 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
1615 requirements of qualified health coverage.

1616 (ii) A contractor may not make a change to the contractor's contribution to the health
1617 benefit plan, unless the contractor provides notice to:

1618 (A) the actuary or underwriter selected by an administrator, as described in Subsection
1619 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
1620 Subsection (5)(a) in compliance with this section; and

1621 (B) the department.

1622 (c) A contractor that is subject to the requirements of this section shall:

1623 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
1624 is subject to the requirements of this section shall obtain and maintain an offer of qualified
1625 health coverage for the subcontractor's employees and the employees' dependents during the

1626 duration of the subcontract; and

1627 (ii) obtain from a subcontractor that is subject to the requirements of this section a
1628 written statement that:

1629 (A) the subcontractor offers qualified health coverage that complies with Section
1630 [26-40-115](#);

1631 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
1632 underwriter who is responsible for developing the employer group's premium rates, or if the
1633 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
1634 underwriter selected by an administrator; and

1635 (C) was created within one year before the day on which the contractor obtains the
1636 statement.

1637 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage
1638 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
1639 accordance with administrative rules adopted by the department under Subsection (6).

1640 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
1641 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

1642 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
1643 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to
1644 penalties in accordance with administrative rules adopted by the department under Subsection
1645 (6).

1646 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
1647 an offer of qualified health coverage described in Subsection (5)(a).

1648 (6) The department shall adopt administrative rules:

1649 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1650 (b) in coordination with:

1651 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

1652 (ii) a public transit district in accordance with Section [17B-2a-818.5](#);

1653 (iii) the State Building Board in accordance with Section [63A-5b-607](#);

- 1654 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);
- 1655 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and
- 1656 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;

1657 and

1658 (c) that establish:

1659 (i) the requirements and procedures a contractor and a subcontractor shall follow to
1660 demonstrate compliance with this section, including:

1661 (A) that a contractor or subcontractor's compliance with this section is subject to an
1662 audit by the department or the Office of the Legislative Auditor General;

1663 (B) that a contractor that is subject to the requirements of this section shall obtain a
1664 written statement described in Subsection (5)(a); and

1665 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
1666 written statement described in Subsection (5)(c)(ii);

1667 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
1668 violates the provisions of this section, which may include:

1669 (A) a three-month suspension of the contractor or subcontractor from entering into
1670 future contracts with the state upon the first violation;

1671 (B) a six-month suspension of the contractor or subcontractor from entering into future
1672 contracts with the state upon the second violation;

1673 (C) an action for debarment of the contractor or subcontractor in accordance with
1674 Section [63G-6a-904](#) upon the third or subsequent violation; and

1675 (D) monetary penalties which may not exceed 50% of the amount necessary to
1676 purchase qualified health coverage for an employee and a dependent of an employee of the
1677 contractor or subcontractor who was not offered qualified health coverage during the duration
1678 of the contract; and

1679 (iii) a website on which the department shall post the commercially equivalent
1680 benchmark, for the qualified health coverage identified in Subsection (1)(e), provided by the
1681 Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

1682 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
1683 or subcontractor who intentionally violates the provisions of this section is liable to the
1684 employee for health care costs that would have been covered by qualified health coverage.

1685 (ii) An employer has an affirmative defense to a cause of action under Subsection
1686 (7)(a)(i) if:

1687 (A) the employer relied in good faith on a written statement described in Subsection
1688 (5)(a) or (5)(c)(ii); or

1689 (B) the department determines that compliance with this section is not required under
1690 the provisions of Subsection (3).

1691 (b) An employee has a private right of action only against the employee's employer to
1692 enforce the provisions of this Subsection (7).

1693 (8) Any penalties imposed and collected under this section shall be deposited into the
1694 Medicaid Restricted Account created in Section [26-18-402](#).

1695 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
1696 required by this section:

1697 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1698 or contractor under:

1699 (i) Section [63G-6a-1602](#); or

1700 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

1701 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1702 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1703 or construction.

1704 (10) An administrator, including an administrator's actuary or underwriter, who
1705 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
1706 coverage of a contractor or subcontractor who provides a health benefit plan described in
1707 Subsection (1)(d)(ii):

1708 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
1709 unless the administrator commits gross negligence in preparing the written statement;

1710 (b) is not liable for any error in the written statement if the administrator relied in good
1711 faith on information from the contractor or subcontractor; and
1712 (c) may require as a condition of providing the written statement that a contractor or
1713 subcontractor hold the administrator harmless for an action arising under this section.