

**ADMINISTRATIVE RULES AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill makes changes to the Administrative Rules Review Committee's duties.

**Highlighted Provisions:**

This bill:

- ▶ renames the Administrative Rules Review Committee, the Administrative Rules Review and General Oversight Committee (committee);
- ▶ permits the committee to:
  - review certain agency policies, procedures, and practices;
  - recommend action by an interim or standing committee; and
  - prepare legislation for consideration by the Legislature; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**19-1-206**, as last amended by Laws of Utah 2020, Chapters 32 and 152

**19-1-207**, as enacted by Laws of Utah 2020, Sixth Special Session, Chapter 14

**19-5-104.5**, as last amended by Laws of Utah 2020, Chapter 256



- 28            **26-18-20**, as enacted by Laws of Utah 2015, Chapter 135
- 29            **40-6-22**, as enacted by Laws of Utah 2020, Sixth Special Session, Chapter 14
- 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

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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; and488 (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, procedures, or practices that:
- 1218 (A) affect a class of persons other than the agency; or
- 1219 (B) interfere with 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) The committee may also notify and refer rules to the chairs of the interim  
1223 committee that has jurisdiction over a particular agency when the committee determines that an  
1224 issue involved in an agency's rules may be more appropriately addressed by that committee.
- 1225 (e) In reviewing a rule, the committee shall follow generally accepted principles of  
1226 statutory construction.
- 1227 (4) When the committee reviews an existing rule, the committee chairs shall invite the  
1228 Senate and House chairs of the standing committee and of the appropriation subcommittee that  
1229 have jurisdiction over the agency whose existing rule is being reviewed to participate as  
1230 nonvoting, ex officio members with the committee.
- 1231 (5) The committee may request that the Office of the Legislative Fiscal Analyst prepare  
1232 a fiscal note on any rule.
- 1233 (6) In order to accomplish the committee's functions described in this chapter, the  
1234 committee has all the powers granted to legislative interim committees under Section [36-12-11](#).
- 1235 (7) (a) The committee may prepare written findings of the committee's review of a rule  
1236 [or], policy, practice, or procedure and may include any recommendation, including:



- 1237            (i) legislative action; or
- 1238            (ii) action by a standing committee or interim committee.
- 1239            (b) When the committee reviews a rule, the committee shall provide to the agency that
- 1240 enacted the rule:
- 1241            (i) the committee's findings, if any; and
- 1242            (ii) a request that the agency notify the committee of any changes the agency makes to
- 1243 the rule.
- 1244            (c) The committee shall provide a copy of the committee's findings described in
- 1245 Subsection (7)(a), if any, to:
- 1246            (i) any member of the Legislature, upon request;
- 1247            (ii) any person affected by the rule, upon request;
- 1248            (iii) the president of the Senate;
- 1249            (iv) the speaker of the House of Representatives;
- 1250            (v) the Senate and House chairs of the standing committee that has jurisdiction over the
- 1251 agency [~~that made the rule~~] whose rule, policy, practice, or procedure is the subject of the
- 1252 finding; and
- 1253            (vi) the Senate and House chairs of the appropriation subcommittee that has
- 1254 jurisdiction over the agency that made the rule.
- 1255            (8) (a) (i) The committee may submit a report on the committee's review [~~of state~~
- 1256 ~~agency rules~~] under this section to each member of the Legislature at each regular session.
- 1257            (ii) The report shall include:
- 1258            (A) any finding or recommendation the committee made under Subsection (7);
- 1259            (B) any action an agency took in response to a committee recommendation; and
- 1260            (C) any recommendation by the committee for legislation.
- 1261            (b) If the committee receives a recommendation not to reauthorize a rule, as described
- 1262 in Subsection [63G-3-301\(13\)\(b\)](#), and the committee recommends to the Legislature
- 1263 reauthorization of the rule, the committee shall submit a report to each member of the
- 1264 Legislature detailing the committee's decision.
- 1265            (c) If the committee recommends legislation, the committee may prepare legislation for
- 1266 consideration by the Legislature at the next general session.
- 1267            Section 17. Section **63G-3-502** is amended to read:

1268           **63G-3-502. Legislative reauthorization of agency rules -- Extension of rules by**  
1269 **governor.**

1270           (1) All grants of rulemaking power from the Legislature to a state agency in any statute  
1271 are made subject to the provisions of this section.

1272           (2) (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on  
1273 February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized  
1274 by the Legislature.

1275           (b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire  
1276 if:

1277           (i) the rule is explicitly mandated by a federal law or regulation; or

1278           (ii) a provision of Utah's constitution vests the agency with specific constitutional  
1279 authority to regulate.

1280           (3) (a) The Administrative Rules Review and General Oversight Committee shall have  
1281 omnibus legislation prepared for consideration by the Legislature during its annual general  
1282 session.

1283           (b) The omnibus legislation shall be substantially in the following form: "All rules of  
1284 Utah state agencies are reauthorized except for the following:".

1285           (c) Before sending the legislation to the governor for the governor's action, the  
1286 Administrative Rules Review and General Oversight Committee may send a letter to the  
1287 governor and to the agency explaining specifically why the committee believes any rule should  
1288 not be reauthorized.

1289           (d) For the purpose of this section, the entire rule, a single section, or any complete  
1290 paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered  
1291 by the Legislature.

1292           (4) [(a)] The Administrative Rules Review and General Oversight Committee may  
1293 have legislation prepared for consideration by the Legislature in the annual general session or a  
1294 special session regarding any rule made according to emergency rulemaking procedures  
1295 described in Section [63G-3-304](#).

1296           (5) The Legislature's reauthorization of a rule by legislation does not constitute  
1297 legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative  
1298 intent.

1299 (6) (a) If an agency believes that a rule that has not been reauthorized by the  
1300 Legislature or that will be allowed to expire should continue in full force and effect and is a  
1301 rule within their authorized rulemaking power, the agency may seek the governor's declaration  
1302 extending the rule beyond the expiration date.

1303 (b) In seeking the extension, the agency shall submit a petition to the governor that  
1304 affirmatively states:

1305 (i) that the rule is necessary; and

1306 (ii) a citation to the source of its authority to make the rule.

1307 (c) (i) If the governor finds that the necessity does exist, and that the agency has the  
1308 authority to make the rule, the governor may declare the rule to be extended by publishing that  
1309 declaration in the Administrative Rules Bulletin on or before April 15 of that year.

1310 (ii) The declaration shall set forth the rule to be extended, the reasons the extension is  
1311 necessary, and a citation to the source of the agency's authority to make the rule.

1312 (d) If the omnibus bill required by Subsection (3) fails to pass both houses of the  
1313 Legislature or is found to have a technical legal defect preventing reauthorization of  
1314 administrative rules intended to be reauthorized by the Legislature, the governor may declare  
1315 all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin  
1316 on or before June 15 without meeting requirements of Subsections (6)(b) and (c).

1317 Section 18. Section **63N-6-203** is amended to read:

1318 **63N-6-203. Board duties and powers.**

1319 (1) The board shall, by rule:

1320 (a) establish criteria and procedures for the allocation and issuance of contingent tax  
1321 credits to designated investors by means of certificates issued by the board;

1322 (b) establish criteria and procedures for assessing the likelihood of future certificate  
1323 redemptions by designated investors, including:

1324 (i) criteria and procedures for evaluating the value of investments made by the Utah  
1325 fund of funds; and

1326 (ii) the returns from the Utah fund of funds;

1327 (c) establish criteria and procedures for issuing, calculating, registering, and redeeming  
1328 contingent tax credits by designated investors holding certificates issued by the board;

1329 (d) establish a target rate of return or range of returns for the investment portfolio of

1330 the Utah fund of funds;

1331 (e) establish criteria and procedures governing commitments obtained by the board  
1332 from designated purchasers including:

1333 (i) entering into commitments with designated purchasers; and

1334 (ii) drawing on commitments to redeem certificates from designated investors;

1335 (f) have power to:

1336 (i) expend funds;

1337 (ii) invest funds;

1338 (iii) issue debt and borrow funds;

1339 (iv) enter into contracts;

1340 (v) insure against loss; and

1341 (vi) perform any other act necessary to carry out its purpose; and

1342 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part  
1343 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1344 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the  
1345 Legislative Management Committee:

1346 (i) whenever made, modified, or repealed; and

1347 (ii) in each even-numbered year.

1348 (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review  
1349 and General Oversight Committee from reviewing and taking appropriate action on any rule  
1350 made, amended, or repealed by the board.

1351 (3) (a) The criteria and procedures established by the board for the allocation and  
1352 issuance of contingent tax credits shall include the contingencies that must be met for a  
1353 certificate and its related tax credits to be:

1354 (i) issued by the board;

1355 (ii) transferred by a designated investor; and

1356 (iii) redeemed by a designated investor in order to receive a contingent tax credit.

1357 (b) The board shall tie the contingencies for redemption of certificates to:

1358 (i) for a private investment initiated before July 1, 2015:

1359 (A) the targeted rates of return and scheduled redemptions of equity interests purchased  
1360 by designated investors in the Utah fund of funds; and

1361 (B) the scheduled principal and interest payments payable to designated investors that  
1362 have made loans initiated before July 1, 2014, including a loan refinanced one or more times  
1363 on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds; or

1364 (ii) for an equity-based private investment initiated on or after July 1, 2015, the  
1365 positive impact on economic development in the state that is related to the fund's investments  
1366 or the success of the corporation's economic development plan in the state, including:

1367 (A) encouraging the availability of a wide variety of venture capital in the state;

1368 (B) strengthening the state's economy;

1369 (C) helping business in the state gain access to sources of capital;

1370 (D) helping build a significant, permanent source of capital available for businesses in  
1371 the state; and

1372 (E) creating benefits for the state while minimizing the use of contingent tax credits.

1373 (4) (a) The board may charge a placement fee to the Utah fund of funds for the  
1374 issuance of a certificate and related contingent tax credit to a designated investor.

1375 (b) The fee shall:

1376 (i) be charged only to pay for reasonable and necessary costs of the board; and

1377 (ii) not exceed .5% of the private investment of the designated investor.

1378 (5) The board's criteria and procedures for redeeming certificates:

1379 (a) shall give priority to the redemption amount from the available funds in the  
1380 redemption reserve; and

1381 (b) to the extent there are insufficient funds in the redemption reserve to redeem  
1382 certificates, shall grant the board the option to redeem certificates:

1383 (i) by certifying a contingent tax credit to the designated investor; or

1384 (ii) by making demand on designated purchasers consistent with the requirements of

1385 Section [63N-6-409](#).

1386 Section 19. Section **72-6-107.5** is amended to read:

1387 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**  
1388 **insurance coverage.**

1389 (1) As used in this section:

1390 (a) "Aggregate" means the sum of all contracts, change orders, and modifications  
1391 related to a single project.

1392 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

1393 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or  
1394 "operative" who:

1395 (i) works at least 30 hours per calendar week; and

1396 (ii) meets employer eligibility waiting requirements for health care insurance, which  
1397 may not exceed the first day of the calendar month following 60 days after the day on which  
1398 the individual is hired.

1399 (d) "Health benefit plan" means:

1400 (i) the same as that term is defined in Section [31A-1-301](#); or

1401 (ii) an employee welfare benefit plan:

1402 (A) established under the Employee Retirement Income Security Act of 1974, 29  
1403 U.S.C. Sec. 1001 et seq.;

1404 (B) for an employer with 100 or more employees; and

1405 (C) in which the employer establishes a self-funded or partially self-funded group  
1406 health plan to provide medical care for the employer's employees and dependents of the  
1407 employees.

1408 (e) "Qualified health coverage" means the same as that term is defined in Section  
1409 [26-40-115](#).

1410 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).

1411 (g) "Third party administrator" or "administrator" means the same as that term is  
1412 defined in Section [31A-1-301](#).

1413 (2) Except as provided in Subsection (3), the requirements of this section apply to:

1414 (a) a contractor of a design or construction contract entered into by the department on  
1415 or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than  
1416 \$2,000,000; and

1417 (b) a subcontractor of a contractor of a design or construction contract entered into by  
1418 the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or  
1419 greater than \$1,000,000.

1420 (3) The requirements of this section do not apply to a contractor or subcontractor  
1421 described in Subsection (2) if:

1422 (a) the application of this section jeopardizes the receipt of federal funds;

1423 (b) the contract is a sole source contract; or  
1424 (c) the contract is an emergency procurement.  
1425 (4) A person that intentionally uses change orders, contract modifications, or multiple  
1426 contracts to circumvent the requirements of this section is guilty of an infraction.  
1427 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the  
1428 department that the contractor has and will maintain an offer of qualified health coverage for  
1429 the contractor's employees and the employees' dependents during the duration of the contract  
1430 by submitting to the department a written statement that:  
1431 (i) the contractor offers qualified health coverage that complies with Section  
1432 [26-40-115](#);  
1433 (ii) is from:  
1434 (A) an actuary selected by the contractor or the contractor's insurer;  
1435 (B) an underwriter who is responsible for developing the employer group's premium  
1436 rates; or  
1437 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),  
1438 an actuary or underwriter selected by a third party administrator; and  
1439 (iii) was created within one year before the day on which the statement is submitted.  
1440 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)  
1441 shall provide the actuary or underwriter selected by an administrator, as described in  
1442 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's  
1443 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the  
1444 requirements of qualified health coverage.  
1445 (ii) A contractor may not make a change to the contractor's contribution to the health  
1446 benefit plan, unless the contractor provides notice to:  
1447 (A) the actuary or underwriter selected by an administrator, as described in Subsection  
1448 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in  
1449 Subsection (5)(a) in compliance with this section; and  
1450 (B) the department.  
1451 (c) A contractor that is subject to the requirements of this section shall:  
1452 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that  
1453 is subject to the requirements of this section shall obtain and maintain an offer of qualified

1454 health coverage for the subcontractor's employees and the employees' dependents during the  
1455 duration of the subcontract; and

1456 (ii) obtain from a subcontractor that is subject to the requirements of this section a  
1457 written statement that:

1458 (A) the subcontractor offers qualified health coverage that complies with Section  
1459 [26-40-115](#);

1460 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an  
1461 underwriter who is responsible for developing the employer group's premium rates, or if the  
1462 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or  
1463 underwriter selected by an administrator; and

1464 (C) was created within one year before the day on which the contractor obtains the  
1465 statement.

1466 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage  
1467 described in Subsection (5)(a) during the duration of the contract is subject to penalties in  
1468 accordance with administrative rules adopted by the department under Subsection (6).

1469 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain  
1470 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

1471 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health  
1472 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to  
1473 penalties in accordance with administrative rules adopted by the department under Subsection  
1474 (6).

1475 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain  
1476 an offer of qualified health coverage described in Subsection (5)(a).

1477 (6) The department shall adopt administrative rules:

1478 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1479 (b) in coordination with:

1480 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

1481 (ii) the Department of Natural Resources in accordance with Section [79-2-404](#);

1482 (iii) the State Building Board in accordance with Section [63A-5b-607](#);

1483 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);

1484 (v) a public transit district in accordance with Section [17B-2a-818.5](#); and



1485 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;  
1486 and

1487 (c) that establish:

1488 (i) the requirements and procedures a contractor and a subcontractor shall follow to  
1489 demonstrate compliance with this section, including:

1490 (A) that a contractor or subcontractor's compliance with this section is subject to an  
1491 audit by the department or the Office of the Legislative Auditor General;

1492 (B) that a contractor that is subject to the requirements of this section shall obtain a  
1493 written statement described in Subsection (5)(a); and

1494 (C) that a subcontractor that is subject to the requirements of this section shall obtain a  
1495 written statement described in Subsection (5)(c)(ii);

1496 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
1497 violates the provisions of this section, which may include:

1498 (A) a three-month suspension of the contractor or subcontractor from entering into  
1499 future contracts with the state upon the first violation;

1500 (B) a six-month suspension of the contractor or subcontractor from entering into future  
1501 contracts with the state upon the second violation;

1502 (C) an action for debarment of the contractor or subcontractor in accordance with  
1503 Section [63G-6a-904](#) upon the third or subsequent violation; and

1504 (D) monetary penalties which may not exceed 50% of the amount necessary to  
1505 purchase qualified health coverage for an employee and a dependent of the employee of the  
1506 contractor or subcontractor who was not offered qualified health coverage during the duration  
1507 of the contract; and

1508 (iii) a website on which the department shall post the commercially equivalent  
1509 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by  
1510 the Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

1511 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor  
1512 or subcontractor who intentionally violates the provisions of this section is liable to the  
1513 employee for health care costs that would have been covered by qualified health coverage.

1514 (ii) An employer has an affirmative defense to a cause of action under Subsection  
1515 (7)(a)(i) if:

1516 (A) the employer relied in good faith on a written statement described in Subsection  
1517 (5)(a) or (5)(c)(ii); or

1518 (B) the department determines that compliance with this section is not required under  
1519 the provisions of Subsection (3).

1520 (b) An employee has a private right of action only against the employee's employer to  
1521 enforce the provisions of this Subsection (7).

1522 (8) Any penalties imposed and collected under this section shall be deposited into the  
1523 Medicaid Restricted Account created in Section 26-18-402.

1524 (9) The failure of a contractor or subcontractor to provide qualified health coverage as  
1525 required by this section:

1526 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
1527 or contractor under:

1528 (i) Section 63G-6a-1602; or

1529 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

1530 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
1531 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
1532 or construction.

1533 (10) An administrator, including an administrator's actuary or underwriter, who  
1534 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health  
1535 coverage of a contractor or subcontractor who provides a health benefit plan described in  
1536 Subsection (1)(d)(ii):

1537 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,  
1538 unless the administrator commits gross negligence in preparing the written statement;

1539 (b) is not liable for any error in the written statement if the administrator relied in good  
1540 faith on information from the contractor or subcontractor; and

1541 (c) may require as a condition of providing the written statement that a contractor or  
1542 subcontractor hold the administrator harmless for an action arising under this section.

1543 Section 20. Section 79-2-404 is amended to read:

1544 **79-2-404. Contracting powers of department -- Health insurance coverage.**

1545 (1) As used in this section:

1546 (a) "Aggregate" means the sum of all contracts, change orders, and modifications

1547 related to a single project.

1548 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

1549 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or  
1550 "operative" who:

1551 (i) works at least 30 hours per calendar week; and

1552 (ii) meets employer eligibility waiting requirements for health care insurance, which  
1553 may not exceed the first day of the calendar month following 60 days after the day on which  
1554 the individual is hired.

1555 (d) "Health benefit plan" means:

1556 (i) the same as that term is defined in Section [31A-1-301](#); or

1557 (ii) an employee welfare benefit plan:

1558 (A) established under the Employee Retirement Income Security Act of 1974, 29  
1559 U.S.C. Sec. 1001 et seq.;

1560 (B) for an employer with 100 or more employees; and

1561 (C) in which the employer establishes a self-funded or partially self-funded group  
1562 health plan to provide medical care for the employer's employees and dependents of the  
1563 employees.

1564 (e) "Qualified health coverage" means the same as that term is defined in Section  
1565 [26-40-115](#).

1566 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).

1567 (g) "Third party administrator" or "administrator" means the same as that term is  
1568 defined in Section [31A-1-301](#).

1569 (2) Except as provided in Subsection (3), the requirements of this section apply to:

1570 (a) a contractor of a design or construction contract entered into by, or delegated to, the  
1571 department or a division, board, or council of the department on or after July 1, 2009, if the  
1572 prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

1573 (b) a subcontractor of a contractor of a design or construction contract entered into by,  
1574 or delegated to, the department or a division, board, or council of the department on or after  
1575 July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

1576 (3) This section does not apply to contracts entered into by the department or a  
1577 division, board, or council of the department if:

- 1578 (a) the application of this section jeopardizes the receipt of federal funds;
- 1579 (b) the contract or agreement is between:
  - 1580 (i) the department or a division, board, or council of the department; and
  - 1581 (ii) (A) another agency of the state;
  - 1582 (B) the federal government;
  - 1583 (C) another state;
  - 1584 (D) an interstate agency;
  - 1585 (E) a political subdivision of this state; or
  - 1586 (F) a political subdivision of another state; or
- 1587 (c) the contract or agreement is:
  - 1588 (i) for the purpose of disbursing grants or loans authorized by statute;
  - 1589 (ii) a sole source contract; or
  - 1590 (iii) an emergency procurement.
- 1591 (4) A person that intentionally uses change orders, contract modifications, or multiple
- 1592 contracts to circumvent the requirements of this section is guilty of an infraction.
- 1593 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
- 1594 department that the contractor has and will maintain an offer of qualified health coverage for
- 1595 the contractor's employees and the employees' dependents during the duration of the contract
- 1596 by submitting to the department a written statement that:
  - 1597 (i) the contractor offers qualified health coverage that complies with Section
  - 1598 [26-40-115](#);
  - 1599 (ii) is from:
    - 1600 (A) an actuary selected by the contractor or the contractor's insurer;
    - 1601 (B) an underwriter who is responsible for developing the employer group's premium
    - 1602 rates; or
    - 1603 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
    - 1604 an actuary or underwriter selected by a third party administrator; and
    - 1605 (iii) was created within one year before the day on which the statement is submitted.
  - 1606 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
  - 1607 shall provide the actuary or underwriter selected by an administrator, as described in
  - 1608 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's

1609 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the  
1610 requirements of qualified health coverage.

1611 (ii) A contractor may not make a change to the contractor's contribution to the health  
1612 benefit plan, unless the contractor provides notice to:

1613 (A) the actuary or underwriter selected by an administrator, as described in Subsection  
1614 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in  
1615 Subsection (5)(a) in compliance with this section; and

1616 (B) the department.

1617 (c) A contractor that is subject to the requirements of this section shall:

1618 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that  
1619 is subject to the requirements of this section shall obtain and maintain an offer of qualified  
1620 health coverage for the subcontractor's employees and the employees' dependents during the  
1621 duration of the subcontract; and

1622 (ii) obtain from a subcontractor that is subject to the requirements of this section a  
1623 written statement that:

1624 (A) the subcontractor offers qualified health coverage that complies with Section  
1625 [26-40-115](#);

1626 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an  
1627 underwriter who is responsible for developing the employer group's premium rates, or if the  
1628 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or  
1629 underwriter selected by an administrator; and

1630 (C) was created within one year before the day on which the contractor obtains the  
1631 statement.

1632 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage  
1633 described in Subsection (5)(a) during the duration of the contract is subject to penalties in  
1634 accordance with administrative rules adopted by the department under Subsection (6).

1635 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain  
1636 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

1637 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health  
1638 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to  
1639 penalties in accordance with administrative rules adopted by the department under Subsection

- 1640 (6).
- 1641 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
- 1642 an offer of qualified health coverage described in Subsection (5)(a).
- 1643 (6) The department shall adopt administrative rules:
- 1644 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 1645 (b) in coordination with:
- 1646 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 1647 (ii) a public transit district in accordance with Section 17B-2a-818.5;
- 1648 (iii) the State Building Board in accordance with Section 63A-5b-607;
- 1649 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 1650 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 1651 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;
- 1652 and
- 1653 (c) that establish:
- 1654 (i) the requirements and procedures a contractor and a subcontractor shall follow to
- 1655 demonstrate compliance with this section, including:
- 1656 (A) that a contractor or subcontractor's compliance with this section is subject to an
- 1657 audit by the department or the Office of the Legislative Auditor General;
- 1658 (B) that a contractor that is subject to the requirements of this section shall obtain a
- 1659 written statement described in Subsection (5)(a); and
- 1660 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
- 1661 written statement described in Subsection (5)(c)(ii);
- 1662 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
- 1663 violates the provisions of this section, which may include:
- 1664 (A) a three-month suspension of the contractor or subcontractor from entering into
- 1665 future contracts with the state upon the first violation;
- 1666 (B) a six-month suspension of the contractor or subcontractor from entering into future
- 1667 contracts with the state upon the second violation;
- 1668 (C) an action for debarment of the contractor or subcontractor in accordance with
- 1669 Section 63G-6a-904 upon the third or subsequent violation; and
- 1670 (D) monetary penalties which may not exceed 50% of the amount necessary to

1671 purchase qualified health coverage for an employee and a dependent of an employee of the  
1672 contractor or subcontractor who was not offered qualified health coverage during the duration  
1673 of the contract; and

1674 (iii) a website on which the department shall post the commercially equivalent  
1675 benchmark, for the qualified health coverage identified in Subsection (1)(e), provided by the  
1676 Department of Health, in accordance with Subsection 26-40-115(2).

1677 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor  
1678 or subcontractor who intentionally violates the provisions of this section is liable to the  
1679 employee for health care costs that would have been covered by qualified health coverage.

1680 (ii) An employer has an affirmative defense to a cause of action under Subsection  
1681 (7)(a)(i) if:

1682 (A) the employer relied in good faith on a written statement described in Subsection  
1683 (5)(a) or (5)(c)(ii); or

1684 (B) the department determines that compliance with this section is not required under  
1685 the provisions of Subsection (3).

1686 (b) An employee has a private right of action only against the employee's employer to  
1687 enforce the provisions of this Subsection (7).

1688 (8) Any penalties imposed and collected under this section shall be deposited into the  
1689 Medicaid Restricted Account created in Section 26-18-402.

1690 (9) The failure of a contractor or subcontractor to provide qualified health coverage as  
1691 required by this section:

1692 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
1693 or contractor under:

1694 (i) Section 63G-6a-1602; or

1695 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

1696 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
1697 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
1698 or construction.

1699 (10) An administrator, including an administrator's actuary or underwriter, who  
1700 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health  
1701 coverage of a contractor or subcontractor who provides a health benefit plan described in

1702 Subsection (1)(d)(ii):

1703           (a) subject to Subsection (10)(b), is not liable for an error in the written statement,  
1704 unless the administrator commits gross negligence in preparing the written statement;

1705           (b) is not liable for any error in the written statement if the administrator relied in good  
1706 faith on information from the contractor or subcontractor; and

1707           (c) may require as a condition of providing the written statement that a contractor or  
1708 subcontractor hold the administrator harmless for an action arising under this section.