

SB0163S01 compared with SB0163

~~text~~ shows text that was in SB0163 but was deleted in SB0163S01.

text shows text that was not in SB0163 but was inserted into SB0163S01.

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Senator Jacob L. Anderegg proposes the following substitute bill:

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:

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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

26-18-20, as enacted by Laws of Utah 2015, Chapter 135

40-6-22, as enacted by Laws of Utah 2020, Sixth Special Session, Chapter 14

53B-27-303, as last amended by Laws of Utah 2020, Chapter 365

54-17-701, as last amended by Laws of Utah 2016, Chapter 13

63A-5b-607, as last amended by Laws of Utah 2020, Chapter 32 and renumbered and amended by Laws of Utah 2020, Chapter 152 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 152

63A-13-202, as last amended by Laws of Utah 2013, Chapter 359 and renumbered and amended by Laws of Utah 2013, Chapter 12

63A-13-305, as enacted by Laws of Utah 2013, Chapter 12

63C-9-403, as last amended by Laws of Utah 2020, Chapters 32 and 152

63G-3-301, as last amended by Laws of Utah 2021, Chapter 382

63G-3-304, as last amended by Laws of Utah 2021, Chapter 437

63G-3-402, as last amended by Laws of Utah 2020, Chapter 408

63G-3-403, as last amended by Laws of Utah 2020, Chapter 408

63G-3-501, as last amended by Laws of Utah 2021, Chapter 437

63G-3-502, as last amended by Laws of Utah 2021, Chapter 437

63N-6-203, as last amended by Laws of Utah 2019, Chapter 214

72-6-107.5, as last amended by Laws of Utah 2020, Chapters 32 and 152

79-2-404, as last amended by Laws of Utah 2020, Chapters 32 and 152

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

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

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

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

(b) a subcontractor of a contractor of a design or construction contract entered into by, or delegated to, the department, or a division or board of the department, on or after July 1,

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2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

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

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

(b) the contract or agreement is between:

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

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

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state;

(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or

(d) the contract is:

(i) a sole source contract; or

(ii) an emergency procurement.

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

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

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

(ii) is from:

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

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

(C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),

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an actuary or underwriter selected by a third party administrator; and

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

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

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

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

(B) the department.

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

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

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

(A) the subcontractor offers qualified health coverage that complies with Section 26-40-115;

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

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

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

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

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

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

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

and

(c) that establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) may not be used by the procurement entity or a prospective bidder, offeror, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) fail to provide regulatory relief.

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

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

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

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

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

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

19-5-104.5. Legislative review and approval.

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

(a) for review to the Natural Resources, Agriculture, and Environment Interim Committee if the total maximum daily load will require a public or private expenditure in excess of \$10,000,000 but less than \$100,000,000 for compliance; or

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

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

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

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

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

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

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

(c) (i) If compliance with the rule or standard requires an expenditure in excess of

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\$250,000, but less than \$10,000,000, the board shall submit the rule or standard for review to the Natural Resources, Agriculture, and Environment Interim Committee.

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

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

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

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

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

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

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

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

- (a) consider the impact of the rule or standard on:
 - (i) economic costs and benefit;
 - (ii) public health; and
 - (iii) the environment;
- (b) suggest additional areas of consideration; or
- (c) recommend the rule or standard to the board for:

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(i) adoption; or

(ii) re-evaluation followed by further review by the Natural Resources, Agriculture, and Environment Interim Committee.

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

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

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

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

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

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

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

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

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

(2) The department shall:

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

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

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

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

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

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

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

(B) over a three year period of time;

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

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

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

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

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

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

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

(A) each individual claim; or

(B) the extrapolation sample.

(ii) Nothing in this section limits a provider's right to appeal the audit under Title 63G,

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General Government, Title 63G, Chapter 4, Administrative Procedures Act, the Medicaid program and its manual or rules, or other laws or rules that may provide remedies to providers.

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

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

(1) On or before June 30, 2021, the board or division may not make, amend, or repeal a rule pursuant to this title, if formal rulemaking was not initiated on or before July 1, 2020, unless the rule constitutes:

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

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

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

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

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

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

(iv) fail to provide regulatory relief.

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

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

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

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

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

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

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

(1) Before August 1, 2019, the board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing a procedure whereby a student enrolled in an institution may submit a complaint to the board alleging a policy of the institution directly affects one or more of the student's civil liberties.

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

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

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

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

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

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

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

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

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

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

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

(1) By January 1, 2011, the Division of Water Quality and the Division of Air Quality, on behalf of the Board of Water Quality and the Board of Air Quality, respectively, in collaboration with the commission and the Division of Oil, Gas, and Mining and the Utah Geological Survey, shall present recommended rules to the Legislature's Administrative Rules

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Review and General Oversight Committee for the following in connection with carbon capture and accompanying geological sequestration of captured carbon:

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

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

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

(4) The recommended rules developed under this section apply to the injection of carbon dioxide and other associated injectants in allowable types of geological formations for the purpose of reducing emissions to the atmosphere through long-term geological sequestration as required by law or undertaken voluntarily or for subsequent beneficial reuse.

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

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purpose of enhanced hydrocarbon recovery.

(6) Rules recommended under this section shall:

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) shall be from:

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

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

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

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

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

(ii) A contractor may not make a change to the contractor's contribution to the health

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benefit plan, unless the contractor provides notice to:

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

(B) the division.

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

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

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

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

(i) shall be from:

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

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

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

(ii) may not be created more than one year before the day on which the contractor obtains the statement from the subcontractor.

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

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

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

(ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain

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an offer of qualified health coverage as required in this section.

(8) The division shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

and

(c) that establish:

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

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

(B) a provision that a contractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (5); and

(C) a provision that a subcontractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (6);

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

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

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

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

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for eligible employees and dependents of eligible employees of the contractor or subcontractor who were not offered qualified health coverage

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during the duration of the contract; and

(iii) a website for the department to post the commercially equivalent benchmark for the qualified health coverage that is provided by the Department of Health in accordance with Subsection 26-40-115(2).

(9) During the duration of a contract, the division may perform an audit to verify a contractor or subcontractor's compliance with this section.

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

(i) a signed actuarial certification that the coverage the contractor or subcontractor offers is qualified health coverage; or

(ii) all relevant documents and information necessary for the division to determine compliance with this section.

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

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

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

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

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

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

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

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

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

- (i) Section 63G-6a-1602; or
- (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

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

(14) An employer's waiting period for an employee to become eligible for qualified health coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.

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

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

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

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

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

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

(1) The inspector general of Medicaid services shall:

- (a) administer, direct, and manage the office;
- (b) inspect and monitor the following in relation to the state Medicaid program:
 - (i) the use and expenditure of federal and state funds;
 - (ii) the provision of health benefits and other services;
 - (iii) implementation of, and compliance with, state and federal requirements; and
 - (iv) records and recordkeeping procedures;
- (c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;
- (d) investigate and identify potential or actual fraud, waste, or abuse in the state

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Medicaid program;

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

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

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

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

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

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

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

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

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

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

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

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

(l) determine ways to:

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

and

(ii) balance efforts to reduce costs and avoid or minimize increased costs of the state

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Medicaid program with the need to encourage robust health care professional and provider participation in the state Medicaid program;

(m) recover improperly paid Medicaid funds;

(n) track recovery of Medicaid funds by the state;

(o) in accordance with Section 63A-13-502:

(i) report on the actions and findings of the inspector general; and

(ii) make recommendations to the Legislature and the governor;

(p) provide training to:

(i) agencies and employees on identifying potential fraud, waste, or abuse of Medicaid funds; and

(ii) health care professionals and providers on program and audit policies and compliance; and

(q) develop and implement principles and standards for the fulfillment of the duties of the inspector general, based on principles and standards used by:

(i) the Federal Offices of Inspector General;

(ii) the Association of Inspectors General; and

(iii) the United States Government Accountability Office.

(2) (a) The office may, in fulfilling the duties under Subsection (1), conduct a performance or financial audit of:

(i) a state executive branch entity or a local government entity, including an entity described in Section 63A-13-301, that:

(A) manages or oversees a state Medicaid program; or

(B) manages or oversees the use or expenditure of state or federal Medicaid funds; or

(ii) Medicaid funds received by a person by a grant from, or under contract with, a state executive branch entity or a local government entity.

(b) (i) The office may not, in fulfilling the duties under Subsection (1), amend the state Medicaid program or change the policies and procedures of the state Medicaid program.

(ii) The office shall identify conflicts between the state Medicaid plan, department administrative rules, Medicaid provider manuals, and Medicaid information bulletins and recommend that the department reconcile inconsistencies. If the department does not reconcile the inconsistencies, the office shall report the inconsistencies to the Legislature's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

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

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

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

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

(c) the contract is an emergency procurement.

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

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

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

(ii) is from:

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

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

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

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

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

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

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

(B) the executive director.

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

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

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

(A) the subcontractor offers qualified health coverage that complies with Section 26-40-115;

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

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

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

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

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

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain

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an offer of qualified health coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

and

(c) that establish:

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

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

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

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

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

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

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

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

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

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of the contract; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) subject to Subsection (10)(b), is not liable for an error in the written statement,

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unless the administrator commits gross negligence in preparing the written statement;

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

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

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

63G-3-301. Rulemaking procedure.

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

(2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the office to implement this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) The rule analysis shall contain:

(a) a summary of the rule or change;

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

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

(d) the anticipated cost or savings to:

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- (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
 - (iv) persons other than small businesses, businesses, or local governmental entities;
 - (e) the compliance cost for affected persons;
 - (f) how interested persons may review the full text of the rule;
 - (g) how interested persons may present their views on the rule;
 - (h) the time and place of any scheduled public hearing;
 - (i) the name and telephone number of an agency employee who may be contacted about the rule;
 - (j) the name of the agency head or designee who authorized the rule;
 - (k) the date on which the rule may become effective following the public comment period;
 - (l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);
 - (m) any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and
 - (n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).
- (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:
- (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
 - (ii) a summary of new substantive provisions appearing only in the enacted rule.
- (b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.
- (10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of the agency's rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

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(11) (a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) the State Tax Commission; or
- (ii) the State Board of Education.

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

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

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

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

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

63G-3-304. Emergency rulemaking procedure.

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

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal

requirements; or

- (c) place the agency in violation of federal or state law.

(2) (a) When finding that its rule is excepted from regular rulemaking procedures by

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this section, the agency shall file with the office and the members of the Administrative Rules Review and General Oversight Committee:

- (i) the text of the rule; and
- (ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The office shall publish the rule in the bulletin as provided in Subsection 63G-3-301(4).

(c) The agency shall notify interested persons as provided in Subsection 63G-3-301(10).

(d) Subject to Subsection 63G-3-502(4), the rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63G-3-301.

Section 14. Section **63G-3-402** is amended to read:

63G-3-402. Office of Administrative Rules -- Duties generally.

(1) The office shall:

(a) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;

(b) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;

(c) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the office may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to the text maintained by the office;

(d) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;

(e) publish a digest of all rules and notices contained in the most recent bulletin;

(f) publish at least annually an index of all changes to the administrative code and the effective date of each change;

(g) print, or contract to print, all rulemaking publications the director determines necessary to implement this chapter;

(h) distribute without charge the bulletin and administrative code to state-designated

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repositories, the Administrative Rules Review and General Oversight Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;

(i) distribute without charge the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;

(j) distribute, at prices covering publication costs, all paper rulemaking publications to all other requesting persons and agencies;

(k) provide agencies assistance in rulemaking;

(l) if the department operates the office as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

(i) the proposed rate and fee schedule as required by Section 63A-1-114; and

(ii) other information or analysis requested by the Rate Committee;

(m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures; and

(n) make technological improvements to the rulemaking process, including improvements to automation and digital accessibility.

(2) The office shall establish by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all filing, publication, and hearing procedures necessary to make rules under this chapter.

(3) The office may after notifying the agency make nonsubstantive changes to rules filed with the office or published in the bulletin or code by:

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

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

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

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

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

(4) In addition, the office may make the following nonsubstantive changes with the

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concurrence of the agency:

- (a) eliminate duplication within rules;
- (b) eliminate obsolete and redundant words; and
- (c) correct defective or inconsistent section and paragraph structure in arrangement of

the subject matter of rules.

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

- (a) the affected code citation;
- (b) a brief description of the change; and
- (c) the date the change was made.

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

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

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

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the office may repeal the code and reenact a new code according to the requirements of this section.

(2) The office may:

- (a) reorganize, reformat, and renumber the code;
- (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63G-3-303; and

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

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

- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- (b) eliminating duplication;
- (c) correcting defective or inconsistent section and paragraph structure in arrangement

of the subject matter of rules;

- (d) eliminating all obsolete or redundant words;
- (e) correcting obvious errors and inconsistencies in punctuation, capitalization,

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numbering, referencing, and wording;

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

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

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

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

(i) notice of the code reenactment;

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

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

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

(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

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

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

(B) in an electronic version; and

(ii) comply with the requirements of Subsection 63G-3-301(10).

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

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

(a) state-designated repositories in Utah;

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

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

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

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

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

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

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

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

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

(b) Each permanent member shall serve:

(i) for a two-year term; or

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

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

(ii) When a vacancy exists:

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

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

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

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

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

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

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

(ii) The committee chairs may suspend the meeting requirement described in

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Subsection (1)(f)(i) at the committee chairs' discretion.

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

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

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

(i) whether the rule is authorized by statute;

(ii) whether the rule complies with legislative intent;

(iii) the rule's impact on the economy and the government operations of the state and local political subdivisions;

(iv) the rule's impact on affected persons;

(v) the rule's total cost to entities regulated by the state;

(vi) the rule's benefit to the citizens of the state; and

(vii) whether adoption of the rule requires legislative review or approval.

(c) The committee may examine and review:

(i) any executive order issued pursuant to Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act; ~~[or]~~

(ii) any public health order issued during a public health emergency declared in accordance with Title 26, Utah Health Code, or Title 26A, Local Health Authorities~~[-];~~ or

(iii) an agency's policies, procedures, or practices that:

(A) affect a class of persons other than the agency; or

(B) interfere with legislative intent.

(d) (i) To carry out these duties, the committee may examine any other issues that the committee considers necessary.

(ii) Notwithstanding anything to the contrary in this section, the committee may not examine an agency's internal policies, procedures, or practices.

~~[(ii)]~~ (iii) The committee may also notify and refer rules to the chairs of the interim committee that has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(e) In reviewing a rule, the committee shall follow generally accepted principles of statutory construction.

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(4) When the committee reviews an existing rule, the committee chairs shall invite the Senate and House chairs of the standing committee and of the appropriation subcommittee that have jurisdiction over the agency whose existing rule is being reviewed to participate as nonvoting, ex officio members with the committee.

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

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

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

(i) legislative action; or

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

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

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

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

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

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

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

(iii) the president of the Senate;

(iv) the speaker of the House of Representatives;

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

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

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

(ii) The report shall include:

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- (A) any finding or recommendation the committee made under Subsection (7);
- (B) any action an agency took in response to a committee recommendation; and
- (C) any recommendation by the committee for legislation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) that the rule is necessary; and

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

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

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

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

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

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

(1) The board shall, by rule:

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

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

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

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

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

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

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

(i) entering into commitments with designated purchasers; and

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

(f) have power to:

(i) expend funds;

(ii) invest funds;

(iii) issue debt and borrow funds;

(iv) enter into contracts;

(v) insure against loss; and

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

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

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

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

(ii) in each even-numbered year.

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

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

- (i) issued by the board;
- (ii) transferred by a designated investor; and
- (iii) redeemed by a designated investor in order to receive a contingent tax credit.

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

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

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

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

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

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

(B) strengthening the state's economy;

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

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

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

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

(b) The fee shall:

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

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

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

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

(b) to the extent there are insufficient funds in the redemption reserve to redeem

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certificates, shall grant the board the option to redeem certificates:

- (i) by certifying a contingent tax credit to the designated investor; or
- (ii) by making demand on designated purchasers consistent with the requirements of

Section 63N-6-409.

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

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

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

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

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

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

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

(c) the contract is an emergency procurement.

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

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

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

(ii) is from:

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

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

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

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

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

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requirements of qualified health coverage.

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

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

(B) the department.

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

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

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

(A) the subcontractor offers qualified health coverage that complies with Section 26-40-115;

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

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

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

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

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

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

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

and

(c) that establish:

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

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

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

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

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

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

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

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

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for an employee and a dependent of the employee of the

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contractor or subcontractor who was not offered qualified health coverage during the duration of the contract; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

(g) "Third party administrator" or "administrator" means the same as that term is

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defined in Section 31A-1-301.

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

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

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

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

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

(b) the contract or agreement is between:

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

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

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state; or

(c) the contract or agreement is:

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

(ii) a sole source contract; or

(iii) an emergency procurement.

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

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

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

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(ii) is from:

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

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

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

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

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

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

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

(B) the department.

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

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

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

(A) the subcontractor offers qualified health coverage that complies with Section 26-40-115;

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

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

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

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

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

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

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

and

(c) that establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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