

1 **STATE CONTRACTOR EMPLOYEE HEALTH COVERAGE**

2 **AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses employee health insurance requirements for state contractors.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the types of contracts that trigger a state contractor's employee health
- 14 insurance requirements;
- 15 ▶ amends provisions for a state contractor to demonstrate compliance;
- 16 ▶ amends employee health insurance requirements;
- 17 ▶ requires the Department of Health to post a benchmark plan for qualified health
- 18 insurance coverage; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **17B-2a-818.5**, as last amended by Laws of Utah 2014, Chapter 425

27 **19-1-206**, as last amended by Laws of Utah 2014, Chapter 425

28 **26-40-115**, as last amended by Laws of Utah 2015, Chapter 107

29 **63A-5-205**, as last amended by Laws of Utah 2014, Chapter 425

30 **63C-9-403**, as last amended by Laws of Utah 2014, Chapter 425

31 **72-6-107.5**, as last amended by Laws of Utah 2014, Chapter 425

32 **79-2-404**, as last amended by Laws of Utah 2014, Chapter 425

33

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

35 Section 1. Section **17B-2a-818.5** is amended to read:

36 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
37 **coverage.**

38 (1) For purposes of this section:

39 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
40 **34A-2-104** who:

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

42 (ii) meets employer eligibility waiting requirements for health care insurance which
43 may not exceed the first day of the calendar month following 60 days from the date of hire.

44 (b) "Health benefit plan" [~~has the same meaning as provided~~] means the same as that
45 term is defined in Section **31A-1-301**.

46 (c) "Qualified health insurance coverage" [~~is as~~] means the same as that term is defined
47 in Section **26-40-115**.

48 (d) "Subcontractor" [~~has the same meaning provided for~~] means the same as that term
49 is defined in Section **63A-5-208**.

50 (2) (a) Except as provided in Subsection (3), this section applies to a design or
51 construction contract entered into by the public transit district on or after July 1, 2009, and to a
52 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

53 (b) (i) A prime contractor is subject to this section if the prime contract is in the
54 amount of [~~\$1,500,000~~] \$2,000,000 or greater at the original execution of the contract.

55 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
56 [~~\$750,000~~] \$1,000,000 or greater at the original execution of the contract.

57 (3) This section does not apply if:

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

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

60 (c) the contract is an emergency procurement.

61 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
62 or a modification to a contract, when the contract does not meet the initial threshold required
63 by Subsection (2).

64 (b) A person who intentionally uses change orders or contract modifications to
65 circumvent the requirements of Subsection (2) is guilty of an infraction.

66 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
67 district that the contractor has and will maintain an offer of qualified health insurance coverage
68 for the contractor's employees and the employee's dependents during the duration of the
69 contract.

70 ~~[(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor~~
71 ~~shall demonstrate to the public transit district that the subcontractor has and will maintain an~~
72 ~~offer of qualified health insurance coverage for the subcontractor's employees and the~~
73 ~~employee's dependents during the duration of the contract.]~~

74 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
75 shall:

76 (i) place a requirement in the subcontract that the subcontractor shall obtain and
77 maintain an offer of qualified health insurance coverage for the subcontractor's employees and
78 the employees' dependants during the duration of the subcontract; and

79 (ii) certify to the public transit district that the subcontractor has and will maintain an
80 offer of qualified health insurance coverage for the subcontractor's employees and the
81 employees' dependents during the duration of the prime contract.

82 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
83 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
84 the public transit district under Subsection (6).

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

86 requirements of Subsection (5)(b).

87 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
88 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
89 the public transit district under Subsection (6).

90 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
91 requirements of Subsection (5)(a).

92 (6) The public transit district shall adopt ordinances:

93 (a) in coordination with:

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

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

96 (iii) the State Building Board in accordance with Section 63A-5-205;

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

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

99 (b) ~~[which]~~ that establish:

100 (i) the requirements and procedures a contractor shall follow to demonstrate to the
101 public transit district compliance with this section ~~[which]~~ that shall include:

102 (A) that a contractor ~~[will not have to]~~ shall demonstrate compliance with Subsection
103 (5)(a) or (b) ~~[more than twice in any 12-month period; and]~~ at the time of the execution of each
104 initial contract described in Subsection (2)(b);

105 (B) that the contractor's compliance is subject to an audit by the public transit district
106 or the Office of the Legislative Auditor General; and

107 ~~[(B)]~~ (C) that the actuarially equivalent determination required for the qualified health
108 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
109 department or division with a written statement of actuarial equivalency, which is no more than
110 one year old, regarding the contractor's offer of qualified health coverage from [either: (F) the
111 Utah Insurance Department; (H)] an actuary selected by the contractor or the contractor's
112 insurer[;], or [(HH)] an underwriter who is responsible for developing the employer group's
113 premium rates;

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

116 (A) a three-month suspension of the contractor or subcontractor from entering into
117 future contracts with the public transit district upon the first violation;

118 (B) a six-month suspension of the contractor or subcontractor from entering into future
119 contracts with the public transit district upon the second violation;

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

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

126 (iii) a website on which the district shall post the commercially equivalent benchmark,
127 for the qualified health insurance coverage identified in Subsection (1)(c), that is provided by
128 the Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

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

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

135 (A) the employer relied in good faith on a written statement of actuarial equivalency
136 provided by an:

137 (I) actuary; or

138 (II) underwriter who is responsible for developing the employer group's premium rates;

139 or

140 (B) a department or division determines that compliance with this section is not
141 required under the provisions of Subsection (3) or (4).

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

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

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

148 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
149 or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah
150 Procurement Code; and

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

154 Section 2. Section 19-1-206 is amended to read:

155 **19-1-206. Contracting powers of department -- Health insurance coverage.**

156 (1) For purposes of this section:

157 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
158 34A-2-104 who:

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

160 (ii) meets employer eligibility waiting requirements for health care insurance which
161 may not exceed the first day of the calendar month following 60 days from the date of hire.

162 (b) "Health benefit plan" [~~has the same meaning as provided~~] means the same as that
163 term is defined in Section 31A-1-301.

164 (c) "Qualified health insurance coverage" [~~is as~~] means the same as that term is defined
165 in Section 26-40-115.

166 (d) "Subcontractor" [~~has the same meaning provided for~~] means the same as that term
167 is defined in Section 63A-5-208.

168 (2) (a) Except as provided in Subsection (3), this section applies to a design or
169 construction contract entered into by or delegated to the department or a division or board of

170 the department on or after July 1, 2009, and to a prime contractor or subcontractor in
171 accordance with Subsection (2)(b).

172 (b) (i) A prime contractor is subject to this section if the prime contract is in the
173 amount of [~~\$1,500,000~~] \$2,000,000 or greater at the original execution of the contract.

174 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
175 [~~\$750,000~~] \$1,000,000 or greater at the original execution of the contract.

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

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

179 (b) the contract or agreement is between:

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

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

182 (B) the federal government;

183 (C) another state;

184 (D) an interstate agency;

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

186 (F) a political subdivision of another state;

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

190 (d) the contract is:

191 (i) a sole source contract; or

192 (ii) an emergency procurement.

193 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
194 or a modification to a contract, when the contract does not meet the initial threshold required
195 by Subsection (2).

196 (b) A person who intentionally uses change orders or contract modifications to
197 circumvent the requirements of Subsection (2) is guilty of an infraction.

198 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
199 director that the contractor has and will maintain an offer of qualified health insurance
200 coverage for the contractor's employees and the employees' dependents during the duration of
201 the contract.

202 ~~[(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall~~
203 ~~demonstrate to the executive director that the subcontractor has and will maintain an offer of~~
204 ~~qualified health insurance coverage for the subcontractor's employees and the employees'~~
205 ~~dependents during the duration of the contract.]~~

206 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall:

207 (i) place a requirement in the subcontract that the subcontractor shall obtain and
208 maintain an offer of qualified health insurance coverage for the subcontractor's employees and
209 the employees' dependants during the duration of the subcontract; and

210 (ii) certify to the executive director that the subcontractor has and will maintain an
211 offer of qualified health insurance coverage for the subcontractor's employees and the
212 employees' dependents during the duration of the prime contract.

213 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
214 of the contract is subject to penalties in accordance with administrative rules adopted by the
215 department under Subsection (6).

216 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
217 requirements of Subsection (5)(b).

218 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
219 the duration of the contract is subject to penalties in accordance with administrative rules
220 adopted by the department under Subsection (6).

221 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
222 requirements of Subsection (5)(a).

223 (6) The department shall adopt administrative rules:

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

225 (b) in coordination with:

- 226 (i) a public transit district in accordance with Section 17B-2a-818.5;
- 227 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 228 (iii) the State Building Board in accordance with Section 63A-5-205;
- 229 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 230 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 231 (vi) the Legislature's Administrative Rules Review Committee; and

232 (c) ~~[which]~~ that establish:

233 (i) the requirements and procedures a contractor shall follow to demonstrate to the
234 public transit district compliance with this section that shall include:

235 (A) that a contractor ~~[will not have to]~~ shall demonstrate compliance with Subsection
236 (5)(a) or (b) ~~[more than twice in any 12-month period; and]~~ at the time of the execution of each
237 initial contract described in Subsection (2)(b);

238 (B) that the contractor's compliance is subject to an audit by the department or the
239 Office of the Legislative Auditor General; and

240 ~~[(B)]~~ (C) that the actuarially equivalent determination required for the qualified health
241 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
242 department or division with a written statement of actuarial equivalency, which is no more than
243 one year old, regarding the contractor's offer of qualified health coverage from [either: (I) the
244 ~~Utah Insurance Department; (H)]~~ an actuary selected by the contractor or the contractor's
245 insurer[;], or ~~[(H)]~~ an underwriter who is responsible for developing the employer group's
246 premium rates;

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

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

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

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

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

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

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

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

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

268 (A) the employer relied in good faith on a written statement of actuarial equivalency
269 provided by:

270 (I) an actuary; or

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

273 (B) the department determines that compliance with this section is not required under
274 the provisions of Subsection (3) or (4).

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

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

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

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

282 or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah
283 Procurement Code; and

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

287 Section 3. Section 26-40-115 is amended to read:

288 **26-40-115. State contractor -- Employee and dependent health benefit plan**
289 **coverage.**

290 (1) For purposes of Sections 17B-2a-818.5, 19-1-206, 63A-5-205, 63C-9-403,
291 72-6-107.5, and 79-2-404, "qualified health insurance coverage" means, at the time the contract
292 is entered into or renewed:

293 [(+) (a) a health benefit plan and employer contribution level with a combined
294 actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark
295 plan determined by the program under Subsection 26-40-106(1), and a contribution level [of] at
296 which the employer pays at least 50% of the premium for the employee and the dependents of
297 the employee who reside or work in the state[-, in which:]; or

298 [~~(a) the employer pays at least 50% of the premium for the employee and the~~
299 ~~dependents of the employee who reside or work in the state; and]~~

300 [~~(b) for purposes of calculating actuarial equivalency under this Subsection (1)(b):]~~

301 [~~(i) rather than the benchmark plan's deductible, and the benchmark plan's~~
302 ~~out-of-pocket maximum based on income levels:]~~

303 [~~(A) the deductible is \$1,000 per individual and \$3,000 per family; and]~~

304 [~~(B) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;]~~

305 [~~(ii) dental coverage is not required; and]~~

306 [~~(iii) other than Subsection 26-40-106(1), the provisions of Section 26-40-106 do not~~
307 ~~apply; or]~~

308 [(2) (b) a federally qualified high deductible health plan that, at a minimum:

309 [~~(a) (i) has a deductible that is [either]:~~

310 [(†)] (A) the lowest deductible permitted for a federally qualified high deductible health
311 plan; or

312 [(†)] (B) a deductible that is higher than the lowest deductible permitted for a federally
313 qualified high deductible health plan, but includes an employer contribution to a health savings
314 account in a dollar amount at least equal to the dollar amount difference between the lowest
315 deductible permitted for a federally qualified high deductible plan and the deductible for the
316 employer offered federally qualified high deductible plan;

317 [(†)] (ii) has an out-of-pocket maximum that does not exceed three times the amount of
318 the annual deductible; and

319 [(†)] (iii) provides that the employer pays 60% of the premium for the employee and
320 the dependents of the employee who work or reside in the state.

321 (2) The department shall:

322 (a) on or before July 1, 2016:

323 (i) determine the commercial equivalent of the benchmark plan described in Subsection
324 (1)(a); and

325 (ii) post the commercially equivalent benchmark plan described in Subsection (2)(a)(i)
326 on the department's website, noting the date posted; and

327 (b) update the posted commercially equivalent benchmark plan annually and at the
328 time of any change in the benchmark.

329 Section 4. Section **63A-5-205** is amended to read:

330 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
331 **coverage.**

332 (1) As used in this section:

333 (a) "Capital developments" [~~has the same meaning as provided~~] means the same as that
334 term is defined in Section 63A-5-104.

335 (b) "Capital improvements" [~~has the same meaning as provided~~] means the same as
336 that term is defined in Section 63A-5-104.

337 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section

338 34A-2-104 who:

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

340 (ii) meets employer eligibility waiting requirements for health care insurance which
341 may not exceed the first day of the calendar month following 60 days from the date of hire.

342 (d) "Health benefit plan" [~~has the same meaning as provided~~] means the same as that
343 term is defined in Section 31A-1-301.

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

346 (f) "Subcontractor" [~~has the same meaning provided for~~] means the same as that term is
347 defined in Section 63A-5-208.

348 (2) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director
349 may:

350 (a) subject to [~~Subsection~~] Subsections (3) and (4), enter into contracts for any work or
351 professional services which the division or the State Building Board may do or have done; and

352 (b) as a condition of any contract for architectural or engineering services, prohibit the
353 architect or engineer from retaining a sales or agent engineer for the necessary design work.

354 (3) [~~(a)~~] Except as provided in Subsection [~~(3)(b)~~] (4), this Subsection (3) applies to all
355 design or construction contracts entered into by the division or the State Building Board on or
356 after July 1, 2009, and:

357 [(i)] (a) applies to a prime contractor if the prime contract is in the amount of
358 [~~\$1,500,000~~] \$2,000,000 or greater at the original execution of the contract; and

359 [(ii)] (b) applies to a subcontractor if the subcontract is in the amount of [~~\$750,000~~]
360 \$1,000,000 or greater at the original execution of the contract.

361 [~~(b) This~~] (4) Subsection (3) does not apply:

362 [(i)] (a) if the application of [~~this~~] Subsection (3) jeopardizes the receipt of federal
363 funds;

364 [(ii)] (b) if the contract is a sole source contract;

365 [(iii)] (c) if the contract is an emergency procurement; or

366 ~~[(iv)]~~ (d) to a change order as defined in Section 63G-6a-103, or a modification to a
367 contract, when the contract does not meet the threshold required by Subsection (3)~~[(a)]~~.

368 ~~[(c)]~~ (5) A person who intentionally uses change orders or contract modifications to
369 circumvent the requirements of Subsection (3)~~[(a)]~~ is guilty of an infraction.

370 ~~[(d)-(i)]~~ (6) (a) A contractor subject to Subsection (3)~~[(a)]~~ shall demonstrate to the
371 director that the contractor has and will maintain an offer of qualified health insurance
372 coverage for the contractor's employees and the employees' dependents.

373 ~~[(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
374 shall demonstrate to the director that the subcontractor has and will maintain an offer of
375 qualified health insurance coverage for the subcontractor's employees and the employees'
376 dependents:]~~

377 (b) If a subcontractor of the contractor is subject to Subsection (3), the contractor shall:

378 (i) place a requirement in the subcontract that the subcontractor shall obtain and
379 maintain an offer of qualified health insurance coverage for the subcontractor's employees and
380 the employees' dependants during the duration of the subcontract; and

381 (ii) certify to the director that the subcontractor has and will maintain an offer of
382 qualified health insurance coverage for the subcontractor's employees and the employees'
383 dependents during the duration of the prime contract.

384 ~~[(c)]~~ (c) (i) [(A)] A contractor who fails to meet the requirements of Subsection
385 ~~[(3)-(d)-(i)]~~ (6)(a) during the duration of the contract is subject to penalties in accordance with
386 administrative rules adopted by the division under Subsection ~~[(3)-(f)]~~ (7).

387 ~~[(B)]~~ (ii) A contractor is not subject to penalties for the failure of a subcontractor to
388 meet the requirements of Subsection ~~[(3)-(d)-(ii)]~~ (6)(b).

389 ~~[(ii)-(A)]~~ (iii) A subcontractor who fails to meet the requirements of Subsection
390 ~~[(3)-(d)-(ii)]~~ (6)(b) during the duration of the contract is subject to penalties in accordance with
391 administrative rules adopted by the division under Subsection ~~[(3)-(f)]~~ (7).

392 ~~[(B)]~~ (iv) A subcontractor is not subject to penalties for the failure of a contractor to
393 meet the requirements of Subsection ~~[(3)-(d)-(i)]~~ (6)(a).

394 ~~[(f)]~~ (7) The division shall adopt administrative rules:

395 ~~[(f)]~~ (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

396 Act;

397 ~~[(f)]~~ (b) in coordination with:

398 ~~[(A)]~~ (i) the Department of Environmental Quality in accordance with Section

399 19-1-206;

400 ~~[(B)]~~ (ii) the Department of Natural Resources in accordance with Section 79-2-404;

401 ~~[(C)]~~ (iii) a public transit district in accordance with Section 17B-2a-818.5;

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

403 ~~[(E)]~~ (v) the Department of Transportation in accordance with Section 72-6-107.5; and

404 ~~[(F)]~~ (vi) the Legislature's Administrative Rules Review Committee; and

405 ~~[(iii) which]~~ (c) that establish:

406 ~~[(A)]~~ (i) the requirements and procedures a contractor must follow to demonstrate to

407 the director compliance with ~~[this Subsection (3) which]~~ Subsections (3) through (10) that shall

408 include:

409 ~~[(F)]~~ (A) that a contractor ~~[will not have to]~~ shall demonstrate compliance with

410 Subsection ~~[(3)(d)(i) or (ii) more than twice in any 12-month period; and] (6)(a) or (b) at the~~

411 time of the execution of each initial contract described in Subsection (3);

412 (B) that the contractor's compliance is subject to an audit by the division or the Office

413 of the Legislative Auditor General; and

414 ~~[(H)]~~ (C) that the actuarially equivalent determination required for the qualified health

415 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the

416 department or division with a written statement of actuarial equivalency, which is not more

417 than one year old, regarding the contractor's offer of qualified health coverage from ~~[either:~~

418 ~~(Aa) the Utah Insurance Department; (Bb)]~~ an actuary selected by the contractor or the

419 contractor's insurer~~[-; or (Cc)], or~~ an underwriter who is responsible for developing the

420 employer group's premium rates;

421 ~~[(B)]~~ (ii) the penalties that may be imposed if a contractor or subcontractor

422 intentionally violates the provisions of [~~this Subsection (3)~~] Subsections (3) through (10),
423 which may include:

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

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

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

430 [~~(FV)~~] (D) monetary penalties which may not exceed 50% of the amount necessary to
431 purchase qualified health insurance coverage for an employee and the dependents of an
432 employee of the contractor or subcontractor who was not offered qualified health insurance
433 coverage during the duration of the contract; and

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

437 [~~(g)(i)~~] (8) (a) In addition to the penalties imposed under Subsection [~~(3)(f)(iii)~~] (7)(c),
438 a contractor or subcontractor who intentionally violates the provisions of this section shall be
439 liable to the employee for health care costs that would have been covered by qualified health
440 insurance coverage.

441 [~~(i)~~] (b) An employer has an affirmative defense to a cause of action under Subsection
442 [~~(3)(g)(i)~~] (8)(a) if:

443 [~~(A)~~] (i) the employer relied in good faith on a written statement of actuarial
444 equivalency provided by:

445 [~~(F)~~] (A) an actuary; or

446 [~~(H)~~] (B) an underwriter who is responsible for developing the employer group's
447 premium rates; or

448 [~~(B)~~] (ii) the department determines that compliance with this section is not required
449 under the provisions of Subsection [~~(3)(b)~~] (4).

450 [(iii)] (c) An employee has a private right of action only against the employee's
451 employer to enforce the provisions of this Subsection [(3)(g)] (8).

452 [(iv)] (9) Any penalties imposed and collected under this section shall be deposited into
453 the Medicaid Restricted Account created by Section 26-18-402.

454 [(i)] (10) The failure of a contractor or subcontractor to provide qualified health
455 insurance coverage as required by this section:

456 [(i)] (a) may not be the basis for a protest or other action from a prospective bidder,
457 offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter
458 6a, Utah Procurement Code; and

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

462 [(4)] (11) The judgment of the director as to the responsibility and qualifications of a
463 bidder is conclusive, except in case of fraud or bad faith.

464 [(5)] (12) The division shall make all payments to the contractor for completed work in
465 accordance with the contract and pay the interest specified in the contract on any payments that
466 are late.

467 [(6)] (13) If any payment on a contract with a private contractor to do work for the
468 division or the State Building Board is retained or withheld, it shall be retained or withheld and
469 released as provided in Section 13-8-5.

470 Section 5. Section 63C-9-403 is amended to read:

471 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

472 (1) For purposes of this section:

473 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
474 34A-2-104 who:

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

476 (ii) meets employer eligibility waiting requirements for health care insurance which
477 may not exceed the first of the calendar month following 60 days from the date of hire.

478 (b) "Health benefit plan" [~~has the same meaning as provided~~] means the same as that
479 term is defined in Section 31A-1-301.

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

482 (d) "Subcontractor" [~~has the same meaning provided for~~] means the same as that term
483 is defined in Section 63A-5-208.

484 (2) (a) Except as provided in Subsection (3), this section applies to a design or
485 construction contract entered into by the board or on behalf of the board on or after July 1,
486 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

487 (b) (i) A prime contractor is subject to this section if the prime contract is in the
488 amount of [~~\$1,500,000~~] \$2,000,000 or greater at the original execution of the contract.

489 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
490 [~~\$750,000~~] \$1,000,000 or greater at the original execution of the contract.

491 (3) This section does not apply if:

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

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

494 (c) the contract is an emergency procurement.

495 (4) (a) This section does not apply to a change order as defined in Section 63G-6a-103,
496 or a modification to a contract, when the contract does not meet the initial threshold required
497 by Subsection (2).

498 (b) A person who intentionally uses change orders or contract modifications to
499 circumvent the requirements of Subsection (2) is guilty of an infraction.

500 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
501 director that the contractor has and will maintain an offer of qualified health insurance
502 coverage for the contractor's employees and the employees' dependents during the duration of
503 the contract.

504 [~~(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor~~
505 ~~shall demonstrate to the executive director that the subcontractor has and will maintain an offer~~

506 of qualified health insurance coverage for the subcontractor's employees and the employees'
507 dependents during the duration of the contract.]

508 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
509 shall:

510 (i) place a requirement in the subcontract that the subcontractor shall obtain and
511 maintain an offer of qualified health insurance coverage for the subcontractor's employees and
512 the employees' dependants during the duration of the subcontract; and

513 (ii) certify to the executive director that the subcontractor has and will maintain an
514 offer of qualified health insurance coverage for the subcontractor's employees and the
515 employees' dependents during the duration of the prime contract.

516 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
517 the duration of the contract is subject to penalties in accordance with administrative rules
518 adopted by the division under Subsection (6).

519 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
520 requirements of Subsection (5)(b).

521 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
522 the duration of the contract is subject to penalties in accordance with administrative rules
523 adopted by the department under Subsection (6).

524 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
525 requirements of Subsection (5)(a).

526 (6) The department shall adopt administrative rules:

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

528 (b) in coordination with:

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

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

531 (iii) the State Building Board in accordance with Section 63A-5-205;

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

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

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

535 (c) ~~[which]~~ that establish:

536 (i) the requirements and procedures a contractor must follow to demonstrate to the
537 executive director compliance with this section ~~[which]~~ that shall include:

538 (A) that a contractor ~~[will not have to]~~ shall demonstrate compliance with Subsection
539 (5)(a) or (b) ~~[more than twice in any 12-month period; and]~~ at the time of the execution of each
540 initial contract described in Subsection (2)(b);

541 (B) that the contractor's compliance is subject to an audit by the department or the
542 Office of the Legislative Auditor General; and

543 ~~[(B)]~~ (C) that the actuarially equivalent determination required for the qualified health
544 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
545 department or division with a written statement of actuarial equivalency, which is no more than
546 one year old, regarding the contractor's offer of qualified health coverage from [either: (F) the
547 Utah Insurance Department; (H)] an actuary selected by the contractor or the contractor's
548 insurer[;], or [(H)] an underwriter who is responsible for developing the employer group's
549 premium rates;

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

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

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

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

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

562 (iii) a website on which the department shall post the commercially equivalent
563 benchmark₂ for the qualified health insurance coverage identified in Subsection (1)(c), that is
564 provided by the Department of Health, in accordance with Subsection 26-40-115(2).

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

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

571 (A) the employer relied in good faith on a written statement of actuarial equivalency
572 provided by:

573 (I) an actuary; or

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

576 (B) the department determines that compliance with this section is not required under
577 the provisions of Subsection (3) or (4).

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

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

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

584 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
585 or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah
586 Procurement Code; and

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

590 Section 6. Section 72-6-107.5 is amended to read:

591 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
592 **insurance coverage.**

593 (1) For purposes of this section:

594 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
595 34A-2-104 who:

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

597 (ii) meets employer eligibility waiting requirements for health care insurance which
598 may not exceed the first day of the calendar month following 60 days from the date of hire.

599 (b) "Health benefit plan" [~~has the same meaning as provided~~] means the same as that
600 term is defined in Section 31A-1-301.

601 (c) "Qualified health insurance coverage" [~~is as~~] means the same as that term is defined
602 in Section 26-40-115.

603 (d) "Subcontractor" [~~has the same meaning provided for~~] means the same as that term
604 is defined in Section 63A-5-208.

605 (2) (a) Except as provided in Subsection (3), this section applies to contracts entered
606 into by the department on or after July 1, 2009, for construction or design of highways and to a
607 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

608 (b) (i) A prime contractor is subject to this section if the prime contract is in the
609 amount of [~~\$1,500,000~~] \$2,000,000 or greater at the original execution of the contract.

610 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
611 [~~\$750,000~~] \$1,000,000 or greater at the original execution of the contract.

612 (3) This section does not apply if:

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

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

615 (c) the contract is an emergency procurement.

616 (4) (a) This section does not apply to a change order as defined in Section 63G-6a-103,
617 or a modification to a contract, when the contract does not meet the initial threshold required

618 by Subsection (2).

619 (b) A person who intentionally uses change orders or contract modifications to
620 circumvent the requirements of Subsection (2) is guilty of an infraction.

621 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
622 the contractor has and will maintain an offer of qualified health insurance coverage for the
623 contractor's employees and the employees' dependents during the duration of the contract.

624 ~~[(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall~~
625 ~~demonstrate to the department that the subcontractor has and will maintain an offer of qualified~~
626 ~~health insurance coverage for the subcontractor's employees and the employees' dependents~~
627 ~~during the duration of the contract.]~~

628 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall:

629 (i) place a requirement in the subcontract that the subcontractor shall obtain and
630 maintain an offer of qualified health insurance coverage for the subcontractor's employees and
631 the employees' dependants during the duration of the subcontract; and

632 (ii) certify to the department that the subcontractor has and will maintain an offer of
633 qualified health insurance coverage for the subcontractor's employees and the employees'
634 dependents during the duration of the prime contract.

635 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
636 the duration of the contract is subject to penalties in accordance with administrative rules
637 adopted by the department under Subsection (6).

638 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
639 requirements of Subsection (5)(b).

640 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
641 the duration of the contract is subject to penalties in accordance with administrative rules
642 adopted by the department under Subsection (6).

643 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
644 requirements of Subsection (5)(a).

645 (6) The department shall adopt administrative rules:

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

647 (b) in coordination with:

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

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

650 (iii) the State Building Board in accordance with Section 63A-5-205;

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

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

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

654 (c) ~~[which]~~ that establish:

655 (i) the requirements and procedures a contractor must follow to demonstrate to the
656 department compliance with this section ~~[which]~~ that shall include:

657 (A) that a contractor ~~[will not have to]~~ shall demonstrate compliance with Subsection
658 (5)(a) or (b) ~~[more than twice in any 12-month period; and]~~ at the time of the execution of each
659 initial contract described in Subsection (2)(b);

660 (B) that the contractor's compliance is subject to an audit by the department or the
661 Office of the Legislative Auditor General; and

662 ~~[(B)]~~ (C) that the actuarially equivalent determination required for qualified health
663 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
664 department or division with a written statement of actuarial equivalency, which is no more than
665 one year old, regarding the contractor's offer of qualified health coverage from [either: (I) the
666 Utah Insurance Department; (H)] an actuary selected by the contractor or the contractor's
667 insurer[;], or [(HH)] an underwriter who is responsible for developing the employer group's
668 premium rates;

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

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

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

674 contracts with the state upon the second violation;

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

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

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

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

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

690 (A) the employer relied in good faith on a written statement of actuarial equivalency
691 provided by:

692 (I) an actuary; or

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

695 (B) the department determines that compliance with this section is not required under
696 the provisions of Subsection (3) or (4).

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

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

701 (9) The failure of a contractor or subcontractor to provide qualified health insurance

702 coverage as required by this section:

703 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
704 or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah
705 Procurement Code; and

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

709 Section 7. Section 79-2-404 is amended to read:

710 **79-2-404. Contracting powers of department -- Health insurance coverage.**

711 (1) For purposes of this section:

712 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
713 34A-2-104 who:

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

715 (ii) meets employer eligibility waiting requirements for health care insurance which
716 may not exceed the first day of the calendar month following 60 days from the date of hire.

717 (b) "Health benefit plan" [~~has the same meaning as provided~~] means the same as that
718 term is defined in Section 31A-1-301.

719 (c) "Qualified health insurance coverage" [~~is as~~] means the same as that term is defined
720 in Section 26-40-115.

721 (d) "Subcontractor" [~~has the same meaning provided for~~] means the same as that term
722 is defined in Section 63A-5-208.

723 (2) (a) Except as provided in Subsection (3), this section applies a design or
724 construction contract entered into by, or delegated to, the department or a division, board, or
725 council of the department on or after July 1, 2009, and to a prime contractor or to a
726 subcontractor in accordance with Subsection (2)(b).

727 (b) (i) A prime contractor is subject to this section if the prime contract is in the
728 amount of [~~\$1,500,000~~] \$2,000,000 or greater at the original execution of the contract.

729 (ii) A subcontractor is subject to this section if a subcontract is in the amount of

730 [~~\$750,000~~] \$1,000,000 or greater at the original execution of the contract.

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

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

734 (b) the contract or agreement is between:

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

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

737 (B) the federal government;

738 (C) another state;

739 (D) an interstate agency;

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

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

742 (c) the contract or agreement is:

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

744 (ii) a sole source contract; or

745 (iii) an emergency procurement.

746 (4) (a) This section does not apply to a change order as defined in Section [63G-6a-103](#),
747 or a modification to a contract, when the contract does not meet the initial threshold required
748 by Subsection (2).

749 (b) A person who intentionally uses change orders or contract modifications to
750 circumvent the requirements of Subsection (2) is guilty of an infraction.

751 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
752 that the contractor has and will maintain an offer of qualified health insurance coverage for the
753 contractor's employees and the employees' dependents during the duration of the contract.

754 [~~(b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the~~
755 ~~contractor shall demonstrate to the department that the subcontractor has and will maintain an~~
756 ~~offer of qualified health insurance coverage for the subcontractor's employees and the~~
757 ~~employees' dependents during the duration of the contract.]~~

758 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
759 shall:

760 (i) place a requirement in the subcontract that the subcontractor shall obtain and
761 maintain an offer of qualified health insurance coverage for the subcontractor's employees and
762 the employees' dependants during the duration of the subcontract; and

763 (ii) certify to the department that the subcontractor has and will maintain an offer of
764 qualified health insurance coverage for the subcontractor's employees and the employees'
765 dependents during the duration of the prime contract.

766 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
767 the duration of the contract is subject to penalties in accordance with administrative rules
768 adopted by the department under Subsection (6).

769 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
770 requirements of Subsection (5)(b).

771 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
772 the duration of the contract is subject to penalties in accordance with administrative rules
773 adopted by the department under Subsection (6).

774 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
775 requirements of Subsection (5)(a).

776 (6) The department shall adopt administrative rules:

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

778 (b) in coordination with:

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

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

781 (iii) the State Building Board in accordance with Section 63A-5-205;

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

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

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

785 (c) [~~which~~] that establish:

786 (i) the requirements and procedures a contractor must follow to demonstrate
787 compliance with this section to the department [~~which~~] that shall include:

788 (A) that a contractor [~~will not have to~~] shall demonstrate compliance with Subsection
789 (5)(a) or (b) [~~more than twice in any 12-month period; and~~] at the time of the execution of each
790 initial contract described in Subsection (2)(b);

791 (B) that the contractor's compliance is subject to an audit by the department or the
792 Office of the Legislative Auditor General; and

793 [~~(B)~~] (C) that the actuarially equivalent determination required for qualified health
794 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
795 department or division with a written statement of actuarial equivalency, which is no more than
796 one year old, regarding the contractor's offer of qualified health coverage from [either: (F) the
797 Utah Insurance Department; (H)] an actuary selected by the contractor or the contractor's
798 insurer[;], or [(HH)] an underwriter who is responsible for developing the employer group's
799 premium rates;

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

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

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

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

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

812 (iii) a website on which the department shall post the commercially equivalent
813 benchmark, for the qualified health insurance coverage identified in Subsection (1)(c),

814 provided by the Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

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

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

821 (A) the employer relied in good faith on a written statement of actuarial equivalency
822 provided by:

823 (I) an actuary; or

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

826 (B) the department determines that compliance with this section is not required under
827 the provisions of Subsection (3) or (4).

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

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

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

834 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
835 or contractor under Section [63G-6a-1603](#) or any other provision in Title 63G, Chapter 6a, Utah
836 Procurement Code; and

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

840 **Section 8. Effective date.**

841 If approved by two-thirds of all the members elected to each house, this bill takes effect

842 upon approval by the governor, or the day following the constitutional time limit of Utah
843 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
844 the date of veto override.