
Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act

Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, was enacted in the 2009 General Session by H.B. 188, Health System Reform - Insurance Market (Chief Sponsor: House Speaker D. Clark).

31A-42-101. Title.

This chapter is known as the "Defined Contribution Risk Adjuster Act."

31A-42-102. Definitions.

As used in this chapter:

- (1) "Board" means the board of directors of the Utah Defined Contribution Risk Adjuster created in Section 31A-42-201.
- (2) "Risk adjuster" means the defined contribution risk adjustment mechanism created in Section 31A-42-201.

31A-42-103. Applicability and scope.

This chapter applies to a carrier as defined in Section 31A-30-103 who offers a health benefit plan in a defined contribution arrangement under Chapter 30, Part 2, Defined Contribution Arrangements.

31A-42-201. Creation of defined contribution market risk adjuster mechanism -- Board of directors -- Appointment -- Terms -- Quorum -- Plan preparation.

- (1) There is created the "Utah Defined Contribution Risk Adjuster," a nonprofit entity within the Insurance Department.
- (2) (a) The risk adjuster shall be under the direction of a board of directors composed of up to nine members described in Subsection (2)(b).
 - (b) The following directors shall be appointed by the governor with the consent of the Senate:
 - (i) at least three, but up to five directors with actuarial experience who represent insurance carriers:
 - (A) that are participating or have committed to participate in the defined contribution arrangement market in the state; and
 - (B) including at least one and up to two directors who represent a carrier that has a small percentage of lives in the defined contribution market;
 - (ii) one director who represents either an individual employee or employer participant in the defined contribution market;
 - (iii) one director appointed by the governor to represent the Office of Consumer Health Services within the Governor's Office of Economic Development;
 - (iv) one director representing the Public Employee's Health Benefit Program with actuarial experience, chosen by the director of the Public Employee's Health Benefit Program who shall serve as an ex officio member; and
 - (v) the commissioner or a representative from the department with actuarial experience appointed by the commissioner, who will only have voting privileges in the event of a tie vote.
- (3) (a) Except as required by Subsection (3)(b), as terms of current board members appointed by the governor expire, the governor shall appoint each new member or reappointed member to a four-year term.
 - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment was made.
- (5) (a) Members who are not government employees shall receive no compensation or benefits for the members' services.
 - (b) A state government member who is a member because of the member's state government position may not receive per diem or expenses for the member's service.
- (6) The board shall elect annually a chair and vice chair from its membership.
- (7) Six board members are a quorum for the transaction of business.
- (8) The action of a majority of the members of the quorum is the action of the board.

31A-42-202. Contents of plan.

- (1) The board shall submit a plan of operation for the risk adjuster to the commissioner. The plan shall:
 - (a) establish the methodology for implementing Subsection (2) for the defined contribution arrangement market established under Chapter 30, Part 2, Defined Contribution Arrangements;
 - (b) establish regular times and places for meetings of the board;
 - (c) establish procedures for keeping records of all financial transactions and for sending annual fiscal reports to the commissioner;
 - (d) contain additional provisions necessary and proper for the execution of the powers and duties of the risk adjuster; and
 - (e) establish procedures in compliance with Title 63A, Utah Administrative Services Code, to pay for administrative expenses incurred.
- (2) (a) The plan adopted by the board for the defined contribution arrangement market shall include:
 - (i) parameters an employer may use to designate eligible employees for the defined contribution arrangement market; and
 - (ii) underwriting mechanisms and employer eligibility guidelines:
 - (A) consistent with the federal Health Insurance Portability and Accountability Act; and
 - (B) necessary to protect insurance carriers from adverse selection in the defined contribution market.
- (b) The plan required by Subsection (2)(a) shall outline how premium rates for a qualified individual are determined, including:
 - (i) the identification of an initial rate for a qualified individual based on:
 - (A) standardized age bands submitted by participating insurers; and
 - (B) wellness incentives for the individual as permitted by federal law; and
 - (ii) the identification of a group risk factor to be applied to the initial age rate of a qualified individual based on the health conditions of all qualified individuals in the same employer group and, for small employers, in accordance with Sections 31A-30-105 and 31A-30-106.
- (c) The plan adopted under Subsection (2)(a) shall outline how:
 - (i) premium contributions for qualified individuals shall be submitted to the Internet portal in the amount determined under Subsection (2)(b); and
 - (ii) the Internet portal shall distribute premiums to the insurers selected by qualified individuals within an employer group based on each individual's health risk factor determined in accordance with the plan.
- (d) The plan adopted under Subsection (2)(a) shall outline a mechanism for adjusting risk between insurers that:
 - (i) identifies health care conditions subject to risk adjustment;
 - (ii) establishes an adjustment amount for each identified health care condition;
 - (iii) determines the extent to which an insurer has more or less individuals with an identified health condition than would be expected; and
 - (iv) computes all risk adjustments.
- (e) The board may amend the plan if necessary to:
 - (i) maintain the solvency of the defined contribution market;
 - (ii) mitigate significant issues of risk selection; or
 - (iii) improve the administration of the risk adjuster mechanism.

31A-42-203. Powers and duties of board.

- (1) The board shall have the power to:
 - (a) enter into contracts to carry out the provisions and purposes of this chapter, including, with the approval of the commissioner, contracts with persons or other organizations for the performance of administrative functions;
 - (b) sue or be sued, including taking legal action necessary to implement and enforce the plan for risk adjustment adopted pursuant to this chapter; and
 - (c) establish appropriate rate adjustments, underwriting policies, and other actuarial functions appropriate to the operation of the defined contribution arrangement market in accordance with Section 31A-42-202.
- (2) (a) The board shall prepare and submit an annual report to the department for inclusion in the department's annual market report, which shall include:
 - (i) the expenses of administration of the risk adjuster for the defined contribution arrangement market;
 - (ii) a description of the types of policies sold in the defined contribution arrangement market;
 - (iii) the number of insured lives in the defined contribution arrangement market; and
 - (iv) the number of insured lives in health benefit plans that do not include state mandates.

- (b) The budget for operation of the risk adjuster is subject to the approval of the board.
- (c) The administrative budget of the board and the commissioner under this chapter shall comply with the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, and is subject to review and approval by the Legislature.
- (3) The board shall report to the Health Reform Task Force and to the Legislative Management Committee prior to October 1, 2009 and again prior to October 1, 2010 regarding:
 - (a) the board's progress in developing the plan required by this chapter; and
 - (b) the board's progress in:
 - (i) expanding choice of plans in the defined contribution market; and
 - (ii) expanding access to the defined contribution market in the Internet portal for large employer groups.

31A-42-204. Powers of commissioner.

- (1) The commissioner shall, after notice and hearing, approve the plan of operation if the commissioner determines that the plan:
 - (a) is consistent with this chapter; and
 - (b) is a fair and reasonable administration of the risk adjuster.
- (2) The plan shall be effective upon the adoption of administrative rules by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) If the board fails to submit a proposed plan of operation by January 1, 2010, or any time thereafter fails to submit proposed amendments to the plan of operation within a reasonable time after requested by the commissioner, the commissioner shall, after notice and hearing, adopt such rules as necessary to effectuate the provisions of this chapter.
- (4) Rules promulgated by the commissioner shall continue in force until modified by the commissioner or until superseded by a subsequent plan of operation submitted by the board and approved by the commissioner.
- (5) The commissioner may designate an executive secretary from the department to provide administrative assistance to the board in carrying out its responsibilities.