Utah Defined Contribution Risk Adjuster
Plan of Operation

As of August 25, 2015
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## Utah Defined Contribution Risk Adjuster Board

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Section 1 – Introduction to Defined Contribution Market

Defined contribution health benefit plans are employer-sponsored health plans that allow individual employees control over their plan choice. In a defined contribution arrangement, the employer offers a pre-determined level of funding for the employees to use to purchase their choice of health insurance, rather than providing a certain level of health benefit.

A defined contribution approach to health insurance puts consumers in control of their health benefit choice while preserving all of the federal tax advantages currently available through an employer-sponsored arrangement. Having consumers more engaged in the process may lead to more efficient healthcare choices and better health.

For the employer, requirements and decisions are simplified. Their primary decision is how much to contribute toward the employee’s health benefit each year. The ability to make a defined contribution to employees’ preferred plans allows employers to more easily plan for future health benefit costs.

Employees, not employers, choose the healthcare coverage from the options available using the pre-tax employer contributions and pre-tax personal funds. Workers who currently do not qualify for employee health coverage may become eligible to receive an employer contribution toward their health insurance. In addition, health benefits are portable from job to job if both employers participate in Avenue H (previously known as the Utah Health Exchange through 2012) defined contribution arrangements.

Avenue H defined contribution market was open for initial registration and enrollment on a limited basis beginning in August 2009, for coverage effective January 1, 2010. The initial registration was limited to approximately 150 employers. Ongoing monthly enrollment for small employers began in September 2010 for coverage effective on or after January 1, 2011 and has continued thereafter.
Section 2 – Utah Defined Contribution Risk Adjuster Board

The responsibility of the Utah Defined Contribution Risk Adjuster Board (“Board”) is to create a Plan of Operation to implement the provisions of the Defined Contribution Risk Adjuster Act. The Board is made up of:

- Several directors with actuarial experience who represent insurance carriers participating in the defined contribution market;
- One director representing an employer;
- One director who represents the Office of Consumer Health Services;
- One director with actuarial experience representing the Public Employees Health Program; and
- One director who is the Utah Insurance Commissioner or a representative appointed by the Utah Insurance Commissioner, with actuarial experience.

The Board will meet as often as necessary to effectuate the provisions of the Risk Adjuster Act and to develop and implement the plan of operation. The board usually meets on the fourth Tuesday of each month at 1 p.m. at the Utah Insurance Department Conference Room (Room 3112 of the State Office Building). As needed, the Chair may adjust the frequency, time, date, or place.

At his/her discretion and with the consent of three additional directors, the Chair may call special meetings if needed.

The Board has enacted Articles of Organization and Bylaws, which are attached as Appendices A and B and incorporated herein by this reference.

All Board meetings will comply with the Utah Open and Public Meetings Act. Notice of Board meetings and minutes of Board meetings, as well as other related materials, will be posted on the Utah Insurance Department’s website. The URL for the Department’s website is www.insurance.utah.gov. For the Utah Public Meeting Notice, please refer to www.utah.gov/pmn.

By resolution of the Board of Directors, the Board may hold meeting by electronic means. See Appendix C, “Resolution to Permit Electronic Meetings, Utah Defined Contribution Risk Adjuster Board,” which is incorporated herein by this reference.

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1 Utah Code Annotated, Title 31A, Chapter 42
2 Utah Code Annotated, Title 52, Chapter 4.
Section 3 - Applicability, Goals & Guidelines

The following guidelines were adopted by the Board to provide ongoing guidance in implementing the risk adjustment mechanism and premium allocation process. These goals and guidelines are not intended to supersede or supplant any part of the Defined Contribution Risk Adjuster Act or any other applicable law.

Whenever any particular course of action is considered, it should be tested against these goals and guidelines prior to adoption. A course of action that fails to support and further any of these goals and guidelines should not be adopted.

- Utilize principle-based policies and procedures.
- Align incentives for all stakeholders.
- Risk normalization, not financial equalization, between participating carriers.
- Promote long-term financial viability through appropriate risk mechanisms and avoid becoming a risk “dumping ground.”
- Promote choice and consumer responsibility.
- Promote transparency.
- Simplify wherever possible.

Effective January 1, 2014, the implementation of risk adjustment as part of the Affordable Care Act (ACA) will replace this current risk adjustment and premium allocation process for all plans that are not a grandfathered plan as defined in 45 CFR 147.140 and are not a transition (“grandmothered”) plan allowed pursuant to guidance as first issued by the Centers for Medicare & Medicaid Services (CMS) on November 14, 2013, and as extended by CMS guidance issued on March 5, 2014, and only to the extent such transition plans continue to be permitted by the Utah Insurance Department.
A small employer is eligible to participate in the defined contribution arrangement. As defined in Utah Code Annotated\textsuperscript{3}, a “small employer,” in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

(a) employed an average of at least one employee (not counting the employer/owner), but not more than 50 eligible employees on each business day during the preceding calendar year; and

(b) employs at least one employee (not counting the employer/owner) on the first day of the plan year.

An employer participating on Avenue H may choose to offer its employees on Avenue H: a defined contribution arrangement health benefit plan or a defined benefit plan; and a dental plan. This does not prohibit the offer of supplemental or limited benefit policies such as dental or vision coverage, or other types of federally qualified savings accounts for healthcare expenses.\textsuperscript{4}

To comply with Utah Code Ann. § 31A-42-202(2), this plan sets forth parameters that an employer may use to establish criteria for employee eligibility for enrollment. Once established, employers may only change these criteria at the annual open enrollment or as required by law. The Board, from time to time, may revise employer eligibility guidelines through this plan. All employee eligibility guidelines must be consistent with the federal Health Insurance Portability and Accountability Act (HIPAA) and the ACA; and protect insurance carriers from adverse selection in the defined contribution market, to the extent allowable under law.\textsuperscript{5}

The employer must establish a mechanism for employees to make their premium contributions using pre-tax dollars. This can include an Internal Revenue Code Section 125 Cafeteria Plan, Health Reimbursement Arrangement, or other plans approved by the IRS.\textsuperscript{6}

The employer shall designate a default plan and notify the employees they will be enrolled in the default health plan selected by the employer unless the employee, within the required time frames:

- Selects a different health benefit plan available through Avenue H;
- Provides proof of coverage from another health benefit plan; or
- Specifically declines coverage in a health benefit plan.\textsuperscript{7}

The employer must offer each eligible employee a choice of health plans chosen by the employer as allowed by Avenue H for which the employee is eligible through the defined contribution arrangement on Avenue H.\textsuperscript{8}

\textsuperscript{3} Utah Code Ann., § 31A-1-301
\textsuperscript{4} Utah Code Ann., § 31A-30-204 (1)(a)
\textsuperscript{5} Utah Code Ann., § 31A-42-202(2)(a)(ii)
\textsuperscript{6} Utah Code Ann., § 31A-30-204 (3)(a)
\textsuperscript{7} Utah Code Ann., § 31A-30-204(3)(b)
\textsuperscript{8} Utah Code Ann., § 31A-30-204(3)(b)
Plans on Avenue H are limited to Utah domiciled employers. Employers may make changes only during renewal. Employees may elect a plan or make a change in their election during open enrollment, renewal or during special enrollments triggered by qualifying events.

Premium must be remitted in compliance with Avenue H requirements.

Enrolling employers must provide complete information as required by Avenue H.

**Owner Only Group Eligibility Requirements**

An owner must provide prior tax year documentation, based on the business entity type, when a wage report is not provided. Tax filing extensions are not acceptable means of documentation. New groups, without prior year tax documentation, are not eligible for coverage. The carriers must review the case in total, including all documentation provided. Carriers must be able to validate all owners enrolling are working 30 hours per week, and are not solely ‘investors,’ silent partners, board members, etc. Carriers may request reasonable information/data to verify this requirement.

Articles of incorporation, business licenses, partnership, and LLC agreements, in and of themselves, do not establish owner eligibility and are not acceptable documentation to satisfy the eligibility requirement.

Effective January 1, 2014, owner only groups that have no eligible employees (not counting the employer/owner) will no longer be eligible to enroll as a new group.

**Acceptable Federal Tax Filing Documentation List**

- **Corporations:**
  - S-Corps: IRS Schedule K-1 (Form 1120S) for all enrolling owners/partners
  - C-Corps: IRS Form 1120 (pages 1 & 2), which includes “Schedule E” partnership/LLP
  - IRS Schedule K-1 (Form 1065) for all enrolling partners

- **LLC:**
  - Copies of appropriate tax returns (follow the guidelines for an S-Corp, partnership or sole proprietorship based on how the LLC was formed).

- **Sole Proprietorship:**
  - IRS Schedule C (Form 1040)
  - Farms: IRS Schedule F (Form 1040)

**Affiliated Groups**

- Employer groups who are not part of a controlled group or affiliated service group, as determined under the Internal Revenue Code are required to be written as separate groups.

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8 Utah Code Ann., § 31A-30-204 (3)(b)(ii)
Section 5 - General Avenue H Participation Rules and Underwriting Requirements

Participating employers must sponsor the health benefit plan and implement an IRS Section 125 Cafeteria plan, health reimbursement arrangement or other similar plan so employees may have the advantage of being able to purchase coverage in a tax-favored manner.

An employer group must enroll and maintain at each renewal at least 75% participation to be eligible for coverage in Avenue H, excluding the one-month special open enrollment period annually from November 15 – December 15 for new and renewing groups with a January 1st anniversary/renewal date.

The participation percentage is calculated as follows:

Participation % = Enrolled Employees / (Eligible Employees* – Eligible Employees with Valid Waivers)

*Eligible Employees: Only employees of the participating employer, except for the following are not considered Eligible Employees for purposes of minimum participation:

1. Employees working less than 30 hours per week
2. Employees in a new hire waiting period that will not be effective on the group’s anniversary
3. Non-Employees with compensation reported by 1099, rather than on the company’s wage and tax reports
4. Union Employees with coverage offered through a collective bargaining agreement where the employer has elected in conjunction with the union to exclude them from being eligible for coverage under the group sponsored plan
5. Employees with Valid Waivers: Valid coverage waivers include Medicare, Medicaid, CHIP, Tricare, other government-sponsored coverage, other group health coverage and individual coverage that meets the definition of a health benefit plan in Utah Code Annotated 31A-1-301.

In computing the participation % above, some employees or workers may fall into more than one of the above ineligible or valid waiver categories. If this is the case, they are to only be counted once in computing the value of the denominator in the above formula.

An employer must enroll at least one eligible employee (not counting the employer/owner) for the group to be eligible for coverage on Avenue H.

Dependent-only coverage is not allowed except as otherwise required by law.

Utah domiciled employers with no more than 50% of eligible employees residing outside the state of Utah are able to participate on Avenue H if the employer has at least one employee (not counting the employer/owner) that is a Utah resident and meets all other eligibility rules.
No profession will be excluded from participation.

Eligibility information and premium must be remitted via Avenue H within the timeframe specified in the Avenue H participation agreement, which is available at www.avenueh.com.

In addition to Avenue H administering participation guidelines at issuance through a review of employer quarterly wage statements and at each renewal, a participating carrier may request an employer to submit a copy of the employer's quarterly wage list at issuance and each renewal to determine whether the employees for whom coverage is provided or requested are bona fide employees of the employer.⁹

Premium rates will be prorated for life events and in compliance with state laws and guidance issued by Health and Human Services (HHS).

Renewal

At renewal, employer participants in Avenue H must hold an active enrollment period during which employees may review their plan choice. If an employee fails to actively select a plan choice, a plan will be determined for the employee who will:

- Option 1. Default to last year’s plan, or its plan equivalent; or
- If Option 1 is not available, Option 2 which is the current default plan as identified by the employer.

Section 6 – Carrier Participation and Offerings

Carriers electing to participate in the defined contribution market must agree to participate for no less than one year and may only exit the defined contribution market by providing 90 day prior notice to the Utah Insurance Department, Avenue H and the Risk Adjuster Board as required by 31A-30-208. Carriers in the defined contribution market must continue to provide coverage for existing enrollment including new hires, open enrollments, special enrollment, life events, etc. until the next renewal of the group after the carrier exits the defined contribution market.\(^\text{10}\)

Carriers agree to participate in the risk adjustment and reinsurance programs adopted by the Board to the extent the risk adjustment provisions of the ACA do not apply. The Board may change the program from time to time. The Board may determine a consultant or administrator is required to administer the program. The Board may initiate a fee to cover the cost of consulting or administrative services.

\(^{10}\) Utah Code Ann., § 31A-30-208(2)(c)
Section 7 - Overview of Defined Contribution Market

Carriers must notify the Utah Insurance Department and Avenue H of their intent to enter or exit the defined contribution market. Carriers opting to participate in Avenue H must agree to participate no less than one year. Carriers are responsible to meet with vendors to establish formats for Avenue H of data needed to develop data standards regarding plan enrollment and employee enrollment and any other data needing to be exchanged between the parties.

Any changes to group or individual applications will be identified by Avenue H and provided to the carriers prior to the transmission of enrollment information to both the banking vendor and the selected carriers.

Avenue H will continue to assign risk factors for new hires and dependent additions for groups effective prior to January 1, 2014 that elect transitional relief using the average risk factor for the group for new hires and average risk factor of the family for dependent additions. These risk factors are used solely for carrier premium allocation adjustments until these groups renew on a plan no longer eligible for transitional relief at which time renewal rates and risk adjustment are governed by the ACA and Utah code.

Avenue H will verify the employer group meets the applicable participation requirements prior to the transmission of enrollment information to both the banking vendor and the selected carriers.

The banking vendor will transfer premium via electronic funds transfer, or other method from the participating employers according to the agreed upon schedule. The banking vendor will not transfer premium until the entire premium has been received.

The banking vendor will separate Avenue H fees, producer commissions, and net premiums, and send them with a remittance advice to the appropriate parties. Avenue H receives all fees but only receives and pays commissions on groups effective prior to January 1, 2014 until they renew in 2014. In determining the allocation of premium to the carriers, the banking vendor will first assure the proper amount of premium has been collected from each employer. Second they will determine the amount of premium due each carrier, based on billed rates. The banking vendor will then apply the risk adjustment methodology prescribed by the Board. Workflow exhibits outlining the process are available at www.avenueh.com.

A retrospective settlement based on a risk pooling formula approved by the Board will be calculated in August of each year to allow for six months of claims run-out from the previous calendar year. The banking vendor will adjust premiums due to carriers on subsequent monthly payment(s) to reflect the final computation approved by the Board.
Outline of the Mechanism for Adjusting Risk Between Carriers

The amount of total risk insured through the defined contribution market is calculated each month as follows:

- Each employee is given a health risk factor through the process previously outlined.
- Conditions that may be counted in this risk factor include factors typically used in the underwriting process by carriers.
- The weight given to each health condition will be based on standard industry methodology.
- The total amount of risk is the sum of the individual risk scores.

The amount of total risk for each carrier is the subtotal of total risk by carrier.

The amount of premium given to each carrier is proportional to the percent of total risk insured to the carrier.

By definition the amount of risk adjustment is the difference between the total amount of net premium (net of fees and expenses) paid by those insured by a given carrier and the amount of premium received by the carrier as calculated here.

Section 8 - Premium Rate Determination

The following premium rate determination provisions are applicable only to medical policies.

Rates in the defined contribution market are subject to the ACA and the Utah "Individual, Small Group, and Group Health Insurance Act."\(^{11}\)

Subject to regulation by the Utah Insurance Department, each carrier is responsible to set rates that comply with federal and state law, including, but not limited to Utah Code Ann., §§ 31A-30-101 et seq., 31A-42-202(2)(a) and 31A-42-202(2)(b), the Health Insurance Portability and Accountability Act, and the Patient Protection and Affordable Care Act.

Any rate adjustments for a specific group made for claims experience, health status, etc., must be made uniformly to all plans and rates offered to the group.

**Premium Rates for Groups Issued Prior to January 1, 2014**

Rates shall be determined and provided to Avenue H in the following age bands:

- Less than 20
- 20-24
- 25-29
- 30-34
- 35-39
- 40-44
- 45-49
- 50-54
- 55-59
- 60-64
- 65 and above

Carriers shall use a standard slope ratio range for each age band, not to exceed an overall ratio of 5:1.\(^ {12}\)

To comply with Utah Code Ann, § 31A-42-202(2) (b) (i)(B), wellness incentives must be considered in determining individual rates, as permitted by federal law.

The rates applicable to an employee and dependents shall be determined based on the employee’s age at enrollment for the current plan year. If an employee has a birthday that results in a change in age band, the change will not take effect until the next plan year.

\(^{11}\) Utah Code Ann., § 31A-30

\(^{12}\) Utah Code Ann., § 31A-30-106.1(7)
Rates shall be in a four tier structure, as follows (domestic partner coverage effective 1/2013):

- Employee only
- Employee + Spouse / Domestic Partner
- Employee with child(ren)
- Employee + Family (spouse/domestic partner and child(ren))

Carriers will submit premium rates to Avenue H net of any producer commissions and compensation, and net of any Avenue H fees. Producer commissions and Avenue H fees will be added to the premiums by Avenue H prior to presentment to employees. For employer bill presentment, commissions and fees will be shown separately from net premiums.

Rates provided by Avenue H to an employer may include producer commissions, and other approved fees. Rates will be valid for 12 months from their effective date, unless it is determined the employer has failed to comply with the provisions outlined in Section 4 and Section 5, then rates may be adjusted in compliance Utah Code Ann., § 31A-21-105(6).

All participating carriers will determine group eligibility and underwrite each eligible employer group. Each carrier will provide Avenue H a group risk factor (GRF) and an individual risk factor (IRF) for each eligible employee. The GRF will be capped at the incumbent risk factor, if applicable. Individual risk factors (IRF) will be calculated based upon the average of the two closest IRFs provided by participating carriers. Carriers will provide final group rates using final group risk factor with ceiling applied.

**Premium Rates for Groups Issued on or After January 1, 2014**

The following rating parameters are applicable to groups issued on or after January 1, 2014. Carriers will include producer commissions and all fees in their rates.

Rates are determined by the location of the employer and an enrollees age and smoking status as follows:

Rates based on the Utah established geographical rating areas as follows:

- Area 1 – Cache and Rich counties,
- Area 2 – Weber, Box Elder and Morgan counties,
- Area 3 – Salt Lake, Davis, Summit, Tooele and Wasatch counties
- Area 4 – Utah county,
- Area 5 – Washington and Iron counties
- Area 6 – Rural counties - all other counties in Utah

- Rate variations are allowed between each of these six geographical rating areas based on the employer’s principal location.
Rates based on age are limited to the following parameters:
- Rates for an employee, spouse and dependents age 21 and older are limited to a ratio of 3 to 1.
- Rates for an employee, spouse and dependents under age 21 cannot vary by age.

Rates based on smoker status are limited to the following:
- Rates for an employee, spouse and dependent age 21 and older are limited to a rate load of up to 50% applied to the rate of each member identified as a smoker.
- Rates for an employee, spouse and dependent under age 21 are not allowed to have a rate load applied for smoker status.

Rates by Family Tier
- Rates applicable to each member taking into account the employer’s principal location to determine the rating area and the age and smoker status of each member are added together to get the total rate for the policy.

Rates for each enrolled employee and spouse and each enrolled dependent age 21 and over are added together along with the rate for each oldest enrolled dependent under age 21, limited to a maximum of three to determine the total rate for the policy. Dependents under age 21 are the only category that limits the number of rates by member added together to determine the total policy rates.
Section 9 - Premium Distribution

The Avenue H banking vendor is responsible for the collection and distribution of the premium. The banking vendor collects the premiums from each participating employer prior to the month of coverage. Premiums collected are remitted to carriers and appropriate entities on or before the 7th business day of the month of coverage.

For plans effective prior to January 1, 2014, distribution of the premium includes the following: payment of producer commissions; distribution of Avenue H fees to the appropriate entities; and distribution of premium to the carriers. The Board has adopted a methodology for recognition of risk selection between carriers. This methodology requires a specific factor be assigned to all participants and the participants of each carrier be weighted in the premium distribution. Risk burden is calculated at the individual level for the plan the employee selects using the formula \[ \left( \frac{\text{premium total}}{\text{group risk factor}} \right) \times (\text{individual risk factor}) \] with the allocation of funds to carriers being determined by the percentage of total revenue for each participating carrier. The above process is only applicable to groups effective prior to January 1, 2014 until they renew thereafter when the risk adjustment provisions of the ACA will apply.

For plans effective on or after January 1, 2014, distribution of premiums includes Avenue H fees to the appropriate entities and distribution of premium to the carriers. Carriers are responsible for payment of commissions to brokers as they are included in the rates provided to Avenue H and collected from participating groups.
Section 10 - Appeals

Operational Appeals
Operational appeals must be submitted in writing to Avenue H who will coordinate with the appropriate entity.

Claims Appeals
Claim payment appeals follow Utah insurance regulations and should be directed to the specific carrier involved.

Any appeal may be submitted to the Utah Insurance Department who will then forward the appeal to the applicable carrier or entity.
Section 11 – Financial Reporting and Audits

Financial Reporting

The Board will establish mechanisms to facilitate regular monitoring and reporting of the financial performance of individual employer groups. Any financial transactions that involve the Board directly (such as fees collected and disbursed to pay for an actuary, consultant or administrator) will be conducted through the Insurance Department’s financial system. Insurance Department staff will keep records of all such transactions and will send an annual report to the Commissioner and to the Board.

Audits

To maintain the proper functioning and solvency of the defined contribution arrangement market and the risk adjuster mechanism, the Board reserves the right to request audits of the following:

- Avenue H and banking functions performed by contracted vendors, limited to:
  - Appropriate charge
  - Allocation
- Participating Employers, limited to:
  - Verify eligibility

All audits will be consistent with contracts and regulations in place at the time of the audit.
Section 12 –Actuary

Pursuant to Utah Code Ann. § 31A-42-202(3), the Board utilizes the Insurance Department’s filing process, in which the participating carriers shall submit their plan base rates, rating factors, and premiums to the commissioner for an actuarial review under the provision of Utah Code Ann. § 31A-30-115 and the ACA prior to the publication of the premium rates on Avenue H.
Section 13 – Changes to Plan of Operation

Pursuant to Utah Code Ann., § 31A-42-202(2) (e), changes may be made to this Plan of Operation, if necessary to:

1) maintain proper functioning and solvency of risk adjuster;
2) mitigate risk selection; and
3) improve administration of risk adjuster.

Amendments to the Plan of Operation are effective when recommended by the Board to the Commissioner and adopted by the Commissioner.\(^\text{13}\)

\(^{13}\) Utah Code Ann. § 31A-42-204(3)
Appendix A – Articles of Organization

Utah Defined Contribution Risk Adjuster

Articles of Organization

Pursuant to Utah Code Ann. Title 31A, Chapter 42, the following constitutes the organizational articles of the Utah Defined Contribution Risk Adjuster (the “Risk Adjuster”), a nonprofit entity within the Utah Insurance Department (the “Department”).

Article I. Name

This entity shall be known as the Utah Defined Contribution Risk Adjuster, hereinafter referred to as the Risk Adjuster, a nonprofit entity created by Utah Code Ann. Title 31A, Chapter 42, hereinafter referred to as the Act.

Article II. Address

The official address of the Risk Adjuster is Utah Insurance Department, State Office Building, Suite 3110, Salt Lake City, Utah 84114-6901.

Article III. Effective Date

These articles, the bylaws and any amendments to either shall become effective following adoption by the board of directors (the “Board”) of the Risk Adjuster and upon approval by the Utah Insurance Commissioner (“Commissioner”).

Article IV. Purpose

The purpose of the Risk Adjuster is to establish a Board within the Department that is given the responsibility to develop a risk adjustment mechanism that will apportion risk among the carriers participating in Avenue H, a defined contribution market to protect carriers from adverse risk selection, created pursuant to Title 63M, Chapter 1, Part 25, Health System Reform Act. The Risk Adjuster will also implement, administer, and enforce Title 31A, Chapter 42, the Defined Contribution Risk Adjuster Act, and assist the Governor’s Office of Consumer Health Services in developing Avenue H, the defined contribution state-facilitated health insurance portal in the state of Utah.

Article V. Definitions from the Act

Where applicable, terms used in these articles and the bylaws shall be as defined in Section 202 of the Act.

Article VI. Conformity to the Act

The Act is hereby incorporated as part of these articles and the bylaws. In the case of any conflict between these articles, bylaws and the Act, the provisions of the Act shall govern.
Article VII. Membership

The Risk Adjuster is a statutorily created nonprofit entity within the Department and shall have no members. Employees, employers, and carriers participating in Avenue H are not members and have no rights of membership in the Risk Adjuster, including the right to nominate and elect the members of the Board of the Risk Adjuster.

Article VIII. Board of Directors

The Board of the Risk Adjuster shall be appointed by the Governor and shall serve as directors for the terms provided for in Section 201 of the Act. The Board shall conduct the business of the Risk Adjuster in accordance with Section 203 of the Act.

Article IX. Audit

The Board shall cause the Risk Adjuster to have a fiscal year financial audit by the State Auditor and will submit the audit report by July 1 of each year to the Commissioner.

Article X. Immunity

Members of the board, the Board’s agents, employees and the Commissioner are immune from liability as provided by state law.

Article XI. Duration and Limitations

The Risk Adjuster shall exist until the legislation that created it is repealed. In the event of dissolution of the Risk Adjuster, all assets remaining after the windup of its affairs shall inure to the benefit of the state of Utah.

The Risk Adjuster shall not afford pecuniary gain, incidentally or otherwise, to any member of the Board or any individual or to any corporation, provided this article shall not prevent the payment to any individual or corporation of such reasonable compensation for services rendered to the Risk Adjuster or other payments necessary in effectuating any of its purposes.

Article XII. Amendments

The articles, bylaws, and Plan of Operation may be altered or amended at any meeting of the Board. Amendments shall be by majority vote of the quorum of the Board. Any amendments shall become effective following adoption by the Board upon approval of the Commissioner.

Dated: June 23, 2015
Appendix B - Bylaws

UTAH DEFINED CONTRIBUTION RISK ADJUSTER
BYLAWS

Pursuant to Utah Code Ann. Title 31A, Chapter 42, hereinafter referred to as the Act, as said law may be amended from time to time, the following constitutes the Bylaws of the Utah Defined Contribution Risk Adjuster, a nonprofit entity within the Utah Insurance Department ("Department"), hereinafter referred to as (the “Risk Adjuster”).

ARTICLE I. THE BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the Risk Adjuster shall be managed by its Board of Directors, ("Board") subject only to such approval of the Utah Insurance Commissioner ("Commissioner") as required by law. The Risk Adjuster shall at all times be managed by its Board, which shall at all times consist of up to nine (9) individuals or as may be increased or changed by law in the future. The Board shall have the powers granted in Section 203 of the Act.

Section 2. Composition. The composition of the Board shall be as now provided in the Act or as it may be amended, and shall consist of:

a. At least three, but up to five, directors with actuarial experience representing carriers that are participating or have committed to participate in the defined contribution arrangement market in Utah, including at least one and up to two directors that represent a carrier that has a small percentage of lives covered in the defined contribution market;

b. One director who represents either an individual employee or employer participant in the defined contribution market in Utah;

c. One director representing the Office of Consumer Health Services within the Governor’s Office of Economic Development;

d. One director representing the Public Employees' Benefit and Health Insurance Program with actuarial experience, appointed by the director of the Public Employees' Benefit and Insurance Program; and

e. The Commissioner or a representative of the Commissioner who is appointed by the Commissioner and has actuarial experience, who will only have voting privileges in the event of a tie vote.

Section 3. Tenure. Except as otherwise provided by the Act, board members shall serve for a term of four (4) years. All board members shall hold office until their successors are duly appointed. However, in order to provide for staggered terms, some board members shall be appointed initially for terms of less than four (4) years so that approximately half of the Board is appointed every two years. Each board member may, if reappointed, serve successive terms without limit unless the Governor’s policy relating to appointments to boards and commissions provides otherwise.
Section 4. Vacancies. Any vacancies occurring in the Board shall be appointed for the unexpired term in the same manner as the original appointment was made.

Section 5. Actions of the Board. The Board shall have the power to:

a. Use its powers as necessary and appropriate to accomplish the objectives of the Risk Adjuster;

b. Elect a Chairperson, Vice Chairperson, and such other officers as are deemed necessary. The duties and responsibilities of such officers shall be as designated in the bylaws; and

c. Establish policies and procedures, as necessary, to facilitate adequate and appropriate levels of operation of the Risk Adjuster.

Section 6. Regular Board Meetings. The Board will meet no less than monthly at the office of the Utah Insurance Department or other designated place.

Section 7. Special Meetings. Special meetings of the Board may be called at the request of the Chairperson or any three (3) voting board members. The times and places for such special meetings shall be set by agreement of the Chair and the board members requesting the meeting.

Section 8. Notice. Notice of any regular or special meeting of the Board shall be given at least twenty-four (24) hours prior to the meeting and shall be posted in a public place at the Department, on the Utah Public Meeting Notice website, and other appropriate public places. Such notice shall be delivered personally or sent by mail or email to each board member and to the Commissioner at their addresses as shown in the records of the Risk Adjuster. An emergency meeting may be held upon twenty-four (24) hours oral notice, provided each member of the Board has reasonable opportunity to attend. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed with postage prepaid. If notice is given by email, such notice shall be deemed to have been given when the email is sent and does not result in notice of non-delivery. Board members are required to maintain a current email account and to notify the Department of any address changes. Any board member may waive notice requirements of any meeting. The attendance of a board member at any meeting shall constitute a waiver of notice of such a meeting, except when a board member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 9. Voting Quorum. The presence of a majority of the board members shall constitute a quorum for the transaction of business.

Section 10. Manner of Acting. The act of a majority of a quorum of board members present at a meeting shall be the act of the Board, unless the act of a greater number is required by law or by these Bylaws. The Commissioner or his/her representative shall not vote except in the event of a tie vote of the Board. The Chair of the Board shall always vote and be recorded in all
matters with the vote of any other board member. An affirmative vote by the majority of the members of a quorum is required to constitute an act of the Board. Board action is required to:

a. Approve contracts with any person or organization to perform administrative activities and duties on behalf of the Risk Adjuster;

b. Remove a board member;

c. Initiate any legal proceeding; or

d. Exercise the powers and perform the duties required of the Board under Section 203 of the Act.

Section 11. Voting. Each board member present shall be entitled to one vote on each matter submitted to a vote of the Board, with the exception of the Commissioner or the Commissioner's representative, as set forth in Section 10 of this Article. Board members shall disclose any conflict of interest, as defined in policy, to the Board.

Proxy Voting. Directors may attend a meeting either in person or by proxy. Proxies must be in writing. The written proxy must state the name of the individual exercising the delegated voting authority and the length of time of the delegated authority.

a. A Director may appoint a proxy to vote or otherwise act for the Director by signing an appointment form.

b. An appointment of a proxy is effective when received by the Chairperson of the Board. An appointment is valid for the period of time as expressly provided in the appointment form.

c. An appointment of a proxy is revocable by the Director.

Section 12. Compensation and Expense. Board members who are not government employees shall receive no compensation or benefits for their services. Board members who are also state government employees may not receive per diem or expenses for their services. Cost of conducting the meeting of the Board shall be borne as administrative costs of the Risk Adjuster. Nothing herein precludes a board member from serving the Risk Adjuster in any other capacity and receiving compensation therefore.

Section 13. Conference Telephone Meetings. Meetings of the Board or any committee of the Risk Adjuster may be held by means of a conference telephone, video conferencing or similar communication by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute the presence of a person at a meeting. Notice of the time and the manner of such meeting shall be given in accordance with Section 10 of this Article of the Bylaws.

Section 14. Immunity. Immunity shall be provided, as available, pursuant to the Utah Governmental Immunity Act under U.C.A. Sections 63G-7-101 et. seq.
ARTICLE II. OFFICERS

Section 1. Annual Election of Officers. The Board shall annually elect from its members a Chairperson of the Board and a Vice Chair. New offices may be created and filled at any meeting of the Board. All officers shall hold office at the pleasure of the Board.

Section 2. Removal. Any officer elected or appointed by the Board may be removed, with or without cause, by a majority vote of the Board (See Article I, Section 11).

Section 3. Vacancies. A vacancy in any office created under this section that occurs because of death, resignation, removal, disqualification or otherwise, shall be elected by the Board for the unexpired portion of the term.

Section 4. Chairperson of the Board. The Chairperson of the Board shall be the Chief Executive Officer of the Risk Adjuster and shall have the power to call meetings of the members of the Board, set the agenda, and the Chairperson or the Chair's designee shall preside at all such meetings of the Board. The Chairperson shall also have the power to call emergency meetings of all committees established by the Board. The Chairperson of the Board shall have power for and in the name of the Risk Adjuster to execute with the Vice Chair such instruments as may be authorized by the Board including, but not limited to: bonds, contracts, or other instruments.

Under the direction of the Board, the Chairperson shall have the power to execute health insurance contracts, reinsurance contracts, provider contracts, administrative contracts and other obligations, and the power to make and execute contracts in the ordinary course of business of the Risk Adjuster.

Section 5. Vice Chair of the Board. In the absence of the Chairperson, the Vice Chair shall perform the duties of the Chair. When so acting, he or she shall have all the powers of, and be subject to, all the restrictions upon the Chair. The Vice Chair shall perform such other duties as may be assigned by the Chairperson or by the Board.

ARTICLE III. COMMITTEES

Section 1. Committees.

a. Formation. The Board may designate and appoint one or more committees, as deemed necessary by the Board. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual board member, of any responsibility imposed upon him or her by law.

b. Term. Each member of the committee shall serve at the pleasure of the Board.

c. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.
ARTICLE IV. RECORDS AND REPORTS

Section 1. Fiscal Year. The fiscal year of the Risk Adjuster shall end June 30 of each calendar year.

Section 2. Market Report. The Board is to prepare and submit no later than July 1 annually to the Department for inclusion in the Department’s annual market report, an annual report which includes:

a. The expenses of administration of the Risk Adjuster in the defined contribution market;
b. The description of the types of policies sold in the defined contribution market;
c. The number of insured lives in the defined contribution market; and
d. The number of insured lives in health benefit plans that do not include state mandates.

Section 3. Budget Report. The Board is to prepare and submit annually to the Department the following:

a. A budget forecast of the operation of the Risk Adjuster; and
b. A proposed budget for the administration of the Board.

Section 4. Books, Records, and Minutes. The Board shall cause to be kept correct and complete books and records of all accounts. Written minutes and a recording shall be kept of the proceedings of each Board meeting. The original of these records shall be retained by the Department. Copies of such minutes shall be furnished to each board member and to the Commissioner. All books and records of the Risk Adjuster may be inspected by the public pursuant to the Government Records Access and Management Act, Utah Code Ann., Title 63G, Chapter 2.

ARTICLE V. OPEN MEETINGS

All meetings of the Board shall be held pursuant to the Open and Public Meetings Act, Utah Code Ann., Title 52, Chapter 4.

ARTICLE VI. OPERATING RULES

The Board will coordinate all requests for Risk Adjuster disbursements and deposits with an employee of the Department designated by the Commissioner. All such deposits or disbursements will be debited or credited to the account of the Risk Adjuster, as required by state finance policy and procedures.

ARTICLE VII. INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Each officer, board member, employee, contractor, or agent of the Risk Adjuster, whether or not then in office, shall be indemnified by the Risk Adjuster against all liabilities, costs, and
expenses reasonably incurred by or imposed upon him or her in connection with or arising out of any action, suit, or proceeding, in which he or she may have been involved or to which he or she may be made a party by reason of being or having been an officer, board member, employee, executive director, contractor, or agent of the Risk Adjuster, to the extent and in the manner allowed by the Utah Revised Nonprofit Corporation Act, Utah Code Annotated, Section 16-6a-901 through 910.

Dated: September 1, 2012
Appendix C – Electronic Meetings Resolution

RESOLUTION TO PERMIT ELECTRONIC MEETINGS

UTAH DEFINED CONTRIBUTION RISK ADJUSTER BOARD

WHEREAS, the Utah Defined Contribution Risk Adjuster Board of Directors
(hereinafter "Board"), finds it necessary, on occasion, to hold meetings by electronic means,

WHEREAS, the Utah Open and Public Meetings Act, changes effective May 1, 2006, mandates
that a public body may not hold an electronic meeting unless the public body has adopted a resolution,
rule, or ordinance governing the use of electronic meetings;

BE IT RESOLVED that meetings of the Board or any committee of the Utah Defined
Contribution Risk Adjuster (hereinafter “UDC Risk Adjuster”) may be held by means of a conference
telephone, video conferencing or similar communication by means of which all persons participating in
the meeting can hear each other. Participation by such means shall constitute the presence of a person at
a meeting. Notice of the time and manner of such meeting shall be given in accordance with Article I,
Section 9 of UDC Risk Adjuster Bylaws and in accordance with the Utah Open and Public Meetings
Act.

The Board hereby adopts the foregoing resolution this 29th day of July, 2009.

Mark Brown
Chairman of the Board