

Senator Lincoln Fillmore proposes the following substitute bill:

MEDICAL RATIONING AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill enacts provisions relating to the allocation of certain health care resources.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ requires the department to make rules regarding the procedure that the department must follow when adopting, modifying, requiring, facilitating, or recommending criteria related to the rationing of scarce health care resources.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

ENACTS:

26-1-43, Utah Code Annotated 1953

Utah Code Sections Affected by Revisor Instructions:

26-1-43, Utah Code Annotated 1953



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

Section 1. Section **26-1-43** is enacted to read:

26-1-43. Requirements for issuing, recommending, or facilitating rationing criteria.

(1) As used in this section:

(a) "Health care resource" means:

(i) health care as defined in Section [78B-3-403](#);

(ii) a prescription drug as defined in Section [58-17b-102](#);

(iii) a prescription device as defined in Section [58-17b-102](#);

(iv) a nonprescription drug as defined in Section [58-17b-102](#); or

(v) any supply or treatment that is intended for use in the course of providing health care as defined in Section [78B-3-403](#).

(b) (i) "Rationing criteria" means any requirement, guideline, process, or recommendation regarding:

(A) the distribution of a scarce health care resource; or

(B) qualifications or criteria for a person to receive a scarce health care resource.

(ii) "Rationing criteria" includes crisis standards of care with respect to any health care resource.

(c) "Scarce health care resource" means a health care resource:

(i) for which the need for the health care resource in the state or region significantly exceeds the available supply of that health care resource in that state or region; ~~and~~

(ii) that, based on the circumstances described in Subsection (1)(c)(i), is distributed or provided using written requirements, guidelines, processes, or recommendations as a factor in the decision to distribute or provide the health care resource ~~;~~ **and**

(iii) that the federal government has allocated to the state to distribute.

(2) (a) On or before July 1, 2022, the department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a procedure that the department will follow to adopt, modify, require, facilitate, or recommend rationing criteria.

(b) Beginning July 1, 2022, the department may not adopt, modify, require, facilitate, or recommend rationing criteria unless the department follows the procedure established by the department under Subsection (2)(a).

57 (3) The procedures developed by the department under Subsection (2) shall include, at
58 a minimum:

59 (a) a requirement that the department notify the following individuals in writing before
60 rationing criteria are issued, are recommended, or take effect:

61 (i) the Administrative Rules Review Committee created in Section [63G-3-501](#);

62 (ii) the governor or the governor's designee;

63 (iii) the president of the Senate or the president's designee;

64 (iv) the speaker of the House of Representatives or the speaker's designee;

65 (v) the executive director or the executive director's designee; and

66 (vi) if rationing criteria affect hospitals in the state, a representative of an association
67 representing hospitals throughout the state, as designated by the executive director; and

68 (b) procedures for an emergency circumstance which shall include, at a minimum:

69 (i) a description of the circumstances under which emergency procedures described in
70 this Subsection (3)(b) may be used; and

71 (ii) a requirement that the department notify the individuals described in Subsections
72 (3)(a)(i) through (vi) as soon as practicable, but no later than 48 hours after the rationing
73 criteria take effect.

74 (4) (a) Within 30 days after the effective date of the bill, the department shall send to
75 the Administrative Rules Review Committee all rationing criteria that:

76 (i) were adopted, modified, required, facilitated, or recommended by the department
77 prior to the effective date of the bill; and

78 (ii) on the effective date of the bill, were in effect and in use to distribute or qualify a
79 person to receive scarce health care resources.

80 (b) During the 2022 interim, the Administrative Rules Review Committee shall, under
81 Subsection [63G-3-501](#)(3)(d)(i), review each of the rationing criteria submitted by the
82 department under Subsection (4)(a).

83 (5) The requirements described in this section and rules made under this section shall
84 apply regardless of whether rationing criteria:

85 (a) have the force and effect of law, or is solely advisory, informative, or descriptive;

86 (b) are carried out or implemented directly or indirectly by the department or by other
87 individuals or entities; or

88 (c) are developed solely by the department or in collaboration with other individuals or
89 entities.

90 (6) This section:

91 (a) may not be suspended under Section [53-2a-209](#) or any other provision of state law
92 relating to a state of emergency;

93 (b) does not limit a private entity from developing or implementing rationing criteria;
94 and

95 (c) does not require the department to adopt, modify, require, facilitate, or recommend
96 rationing criteria that the department does not determine to be necessary or appropriate.

97 (7) Subsection (2) does not apply to rationing criteria that are adopted, modified,
98 required, facilitated, or recommended by the department:

99 (a) through the regular, non-emergency rulemaking procedure described in Section
100 [63G-3-301](#);

101 (b) if the modification is solely to correct a technical error in rationing criteria such as
102 correcting obvious errors and inconsistencies including those involving punctuation,
103 capitalization, cross references, numbering, and wording;

104 (c) to the extent that compliance with this section would result in a direct violation of
105 federal law;

106 (d) that are necessary for administration of the Medicaid program;

107 (e) if state law explicitly authorizes the department to engage in rulemaking to
108 establish rationing criteria; or

109 (f) if rationing criteria are authorized directly through a general appropriation bill that
110 is validly enacted.

111 **Section 2. Effective date.**

112 If approved by two-thirds of all the members elected to each house, this bill takes effect
113 upon approval by the governor, or the day following the constitutional time limit of Utah
114 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
115 the date of veto override.

116 **Section 3. Revisor instructions.**

117 The Legislature intends that the Office of Legislative Research and General Counsel, in
118 preparing the Utah Code database for publication, replace the references in Subsection [26-1-43](#)

119 (4)(a) from "the effective date of this bill" to the bill's actual effective date.