

MEDICAL RATIONING AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

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 meet certain requirements 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

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



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

29 **26-1-43. Requirements for issuing, recommending, or facilitating rationing**
30 **criteria.**

31 (1) As used in this section:

32 (a) "Health care resource" means:

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

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

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

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

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

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

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

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

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

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

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

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

51 (2) Beginning on the effective date of this bill, the department may not adopt, modify,
52 require, facilitate, or recommend rationing criteria unless the department, notwithstanding any
53 other provision of law, notifies the following individuals in writing before the rationing criteria
54 is issued, is recommended, or takes effect:

55 (a) the governor or the governor's designee;

56 (b) the president of the Senate or the president's designee;

57 (c) the speaker of the House of Representatives or the speaker's designee;

58 (d) the executive director or the executive director's designee;

59 (e) if the rationing criteria affects hospitals in the state, a representative of an
60 association representing hospitals throughout the state, as designated by the executive director;
61 and

62 (f) if the rationing criteria affects any class of health care professionals in the state, a
63 representative of an association representing those health care professionals in the state that are
64 affected by the rationing criteria, as designated by the executive director.

65 (3) Rationing criteria submitted under Subsection (2) may not be adopted, modified,
66 required, facilitated, or recommended by the department until the later of:

67 (a) the day on which each of the individuals listed in Subsections (2)(a) through (f)
68 respond with a written recommendation agreeing with the department's rationing criteria; and

69 (b) 10 days after the day on which the department sends the rationing criteria to the
70 individuals listed in Subsections (2)(a) through (f).

71 (4) (a) Within 30 days after the effective date of this bill, the department shall send all
72 rationing criteria that were adopted, modified, required, facilitated, or recommended by the
73 department prior to the effective date of this bill to:

74 (i) the governor; and

75 (ii) the Administrative Rules Review Committee created in Section [63G-3-501](#).

76 (b) On or before July 1, 2022, the Administrative Rules Review Committee shall,
77 under Subsection [63G-3-501\(3\)\(d\)\(i\)](#), review each of the rationing criteria submitted by the
78 department under Subsection (4)(a) and issue a written report for each of the rationing criteria
79 that recommends that the department:

80 (i) continue to adopt, require, facilitate, or recommend the rationing criteria; or

81 (ii) modify or suspend the rationing criteria.

82 (c) Within 15 days after the day on which the Administrative Rules Review Committee
83 issues a written recommendation to the department under Subsection (4)(b)(ii), the department
84 shall send a written response for each recommendation explaining:

85 (i) that the department will adopt the recommended modification or suspension
86 recommended by the Administrative Rules Review Committee; or

87 (ii) the reasons why the department declines to adopt the recommended modification or
88 suspension recommended by the Administrative Rules Review Committee, and if applicable,
89 any follow up actions that the department will take with respect to the rationing criteria.

90 (5) The requirements described in this section apply regardless of whether the rationing
91 criteria:

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

93 (b) is carried out or implemented directly or indirectly by the department or by other
94 individuals or entities; or

95 (c) is developed solely by the department or in collaboration with other individuals or
96 entities.

97 (6) This section:

98 (a) may not be suspended under Section 53-2a-209 or any other provision of state law
99 relating to a state of emergency;

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

101 (c) does not apply to the extent that compliance with this section would result in a
102 direct violation of federal law; and

103 (d) does not apply to rationing criteria that are authorized directly through:

104 (i) a general appropriation bill that is validly enacted; or

105 (ii) explicit authorization in state law for the department to engage in rulemaking to
106 establish the rationing criteria.

107 **Section 2. Effective date.**

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

112 **Section 3. Revisor instructions.**

113 The Legislature intends that the Office of Legislative Research and General Counsel, in
114 preparing the Utah Code database for publication, replace the references in Subsections
115 26-1-43(2) and (4)(a) from "the effective date of this bill" to the bill's actual effective date.