

SB0194S01 compared with SB0194

~~text~~ shows text that was in SB0194 but was deleted in SB0194S01.

inserted text shows text that was not in SB0194 but was inserted into SB0194S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Lincoln Fillmore proposes the following substitute bill:

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~~ 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:

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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:

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

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the decision to distribute or provide the health care resource.

(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 ~~on the effective date of this bill~~ July 1, 2022, the department may not adopt, modify, require, facilitate, or recommend rationing criteria unless the department ~~notwithstanding any other provision of law, notifies~~ follows the procedure established by the department under Subsection (2)(a).

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

(a) a requirement that the department notify the following individuals in writing before ~~the~~ rationing criteria ~~is~~ are issued, ~~is~~ are recommended, or ~~takes effect~~:

~~(a)~~ take effect:

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

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

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

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

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

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

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

~~(3) Rationing criteria submitted under Subsection (2) may not be adopted, modified, required, facilitated, or recommended by~~ (b) procedures for an emergency circumstance which shall include, at a minimum:

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

(ii) a requirement that the department ~~until the later of:~~

~~(a) the day on which each of~~ notify the individuals ~~listed~~ described in Subsections

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~~(2)(3)(a)(i) through (f)(vi) respond with a written recommendation agreeing with the department's rationing criteria, and~~

~~(b) 10 days after the day on which the department sends~~ as soon as practicable, but no later than 48 hours after the rationing criteria ~~to the individuals listed in Subsections (2)(a) through (f)~~ take effect.

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

(i) were adopted, modified, required, facilitated, or recommended by the department prior to the effective date of this the bill ~~to:~~

~~(i) the governor;~~ and

~~(ii) the Administrative Rules Review Committee created in Section 63G-3-501.~~

~~(b) On or before July 1, 2022~~ on the effective date of the bill, were in effect and in use to distribute or qualify a person to receive scarce health care resources.

(b) During the 2022 interim, the Administrative Rules Review Committee shall, under Subsection 63G-3-501(3)(d)(i), review each of the rationing criteria submitted by the department under Subsection (4)(a) ~~and issue a written report for each of the rationing criteria that recommends that the department:~~

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

~~(ii) modify or suspend the rationing criteria.~~

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

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

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

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

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

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

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

(6) This section:

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

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

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

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

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

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

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

~~(d) does not apply to;~~

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

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

(f) if rationing criteria are authorized directly through~~;~~

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

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

Section 2. **Effective date.**

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

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

Section 3. **Revisor instructions.**

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