

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

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

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;

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; and

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

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

55 (b) Beginning July 1, 2022, the department may not adopt, modify, require, facilitate,

56 or recommend rationing criteria unless the department follows the procedure established by the
57 department under Subsection (2)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 department under Subsection (4)(a).

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

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

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

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

91 (6) This section:

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

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

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

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

100 (a) through the regular, non-emergency rulemaking procedure described in Section
101 [63G-3-301](#);

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

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

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

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

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

112 Section 2. **Effective date.**

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

117 Section 3. **Revisor instructions.**

118 The Legislature intends that the Office of Legislative Research and General Counsel, in
119 preparing the Utah Code database for publication, replace the references in Subsection
120 [26-1-43\(4\)\(a\)](#) from "the effective date of this bill" to the bill's actual effective date.