



January 12, 2022

Nathan Checketts
Executive Director
Utah Department of Health
PO Box 141000
Salt Lake City, UT 84114-1000

Dear Director Checketts:

This letter serves as notice of potential legal action related to the blatantly unconstitutional, immoral, and racist policies of the Utah Department of Health that direct the rationing of medicine based on race and self-selected ethnicity.

Since at least [November of 2020](#), your Department has promulgated guidance to medical providers throughout the State of Utah through a document entitled “Utah Crisis Standards of Care, Monoclonal Antibody Allocation Guidelines.” Its stated purpose is to “guide the allocation of monoclonal antibody therapies while they are a scarce patient care resource[.]” It has been regularly updated—including as recently as [November 23, 2021](#).

Your Department’s prioritization scheme makes these potentially life-saving treatments available to certain individuals with inarguable risk factors (i.e. in addition to a positive diagnosis for COVID-19, being elderly, pregnant, or severely immunocompromised). And we have no dispute with prioritizing treatment for such individuals. But everyone else is only eligible if they meet a certain “Risk Score” (which also irrationally varies based on vaccination status).

Astoundingly, your guidance awards additional risk points to anyone who is “Non-White race or Hispanic/Latinx ethnicity.” Meaning, your Department treats all non-white people as a monolithic block—indistinguishable from each other in any other manner other than being of non-white skin color. And because they receive additional points towards their Risk Score, it potentially makes treatment available to them over an equally at-risk white person, regardless of their individual circumstances.

To justify this blatant discrimination, your Department notes:

COVID-19 has had a disproportionate impact on low income communities and certain racial/ethnic minorities in the United States. Equity

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calls attention to the systematic differences in health outcomes and opportunities to be healthy that adversely affect socially discounted and/or marginalized groups. For COVID-19, these inequities may arise from higher burdens of preexisting comorbid disease, poor health care access, or not having the option for social distancing due to living in densely populated neighborhoods or households. There are also more economically disadvantaged individuals working essential jobs during the pandemic, and many are unable to perform job functions from the safety of their home. This puts them at greater risk of interacting with others who may transmit COVID-19. Utah Data from more than one hundred thousand patients with COVID-19 confirms that even after controlling for age and comorbidities, Utahns who identify from communities of color have a significantly higher risk of severe disease requiring hospitalization. Public health interventions may be used to attempt to mitigate these disparities in COVID-19 by recognizing the structural inequities that underlie them. One way to do this is to include race/ethnicity in the patient selection criteria.

This garbled mix of rhetoric rooted in Marxism and social justice plainly does not support your Department's policies. Citizens of Utah of all backgrounds—including white people—live with preexisting conditions, have poor health care access, or live in more densely populated neighborhoods or households. White people work in essential jobs, too. Stating that “one way” to address risk factors associated with such characteristics is to “include race/ethnicity in the patient selection criteria” is not enough to justify this blatantly unequal treatment under the law. Not only do your justifications not support your conclusions, but they cast aspersions on the living conditions and socioeconomic status of all non-white people in the State of Utah.

You must immediately rescind these unconstitutional, unlawful, and un-American policies. They violate the Constitution and numerous federal statutes—including Title VI and section 1557 of the Affordable Care Act.

Using a patient's skin color or ethnicity—rather than the unique and specific medical circumstances of an individual patient—as a basis for deciding who should obtain lifesaving medical treatment is appalling. The color of one's skin is not a medical condition akin to hypertension, heart disease, or obesity, which are known to aggravate the risk of death or severe illness among those infected with COVID-19. Directing medical professionals to provide or deny medical care based on immutable characteristics like skin color, without regard to the particular health conditions of the individual patients who are seeking these life-saving antiviral treatments, is nothing more than an attempt to establish a racial hierarchy in the provision of life-saving medicine.

Rescind these egregious policies now or prepare for legal challenges.

Sincerely,

A handwritten signature in black ink, appearing to read "G P Hamilton".

Gene Hamilton
Vice-President and General Counsel
America First Legal Foundation

cc: State of Utah, Office of the Governor
cc: State of Utah, Office of the Attorney General
cc: U.S. Department of Health and Human Services, Office for Civil Rights
cc: U.S. Department of Justice, Civil Rights Division