

CONTROLLED SUBSTANCE DATABASE AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Patrice M. Arent

AN ACT RELATING TO CRIMINAL LAW AND PUBLIC SAFETY; AMENDING THE RECORDS REQUIREMENTS REGARDING THE CONTROLLED SUBSTANCE DATABASE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-37-7.5, as last amended by Chapter 13, Laws of Utah 1998

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

Section 1. Section **58-37-7.5** is amended to read:

58-37-7.5. Controlled Substance Database -- Advisory committee -- Pharmacy reporting requirements -- Access -- Penalties.

(1) As used in this section:

(a) "Committee" means the Controlled Substance Database Advisory Committee created in this section.

(b) "Database" means the controlled substance database created in this section.

(c) "Database manager" means the person responsible for operating the database, or his designee.

(d) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(e) "Drug outlet" has the same definition as in Section 58-17a-102.

(f) "Health care facility" has the same definition as in Section 26-21-2.

(2) (a) There is created within the division a controlled substance database.

(b) The division shall administer and direct the functioning of the database in accordance with this section. The division may under state procurement laws contract with another state agency or private entity to establish, operate, or maintain the database. The division in collaboration with the board shall determine whether to operate the database within the division or contract with another entity to operate the database, based on an analysis of costs and benefits.

(c) The purpose of the database is to contain data as described in this section regarding every prescription for a controlled substance dispensed in the state to any person other than an inpatient in a licensed health care facility.

(d) Data required by this section shall be submitted in compliance with this section to the manager of the database by the pharmacist in charge of the drug outlet where the controlled substance is dispensed.

(3) (a) There is created the Controlled Substance Database Advisory Committee. The committee members are:

- (i) two members representing the Utah Medical Association;
 - (ii) one member representing the Utah Dental Association;
 - (iii) two members representing the Utah Pharmaceutical Association;
 - (iv) one member representing the Department of Public Safety;
 - (v) one member representing the Utah Association of Chiefs of Police;
 - (vi) one member representing the Utah Sheriffs Association;
 - (vii) one member representing the state Office of the Attorney General;
 - (viii) one member representing the Statewide Association of Public Attorneys; and
 - (ix) three members representing the general public, and who are not health care providers.
- (b) The committee shall be appointed and serve in accordance with Section 58-1-201.
- (c) The committee shall advise the division regarding:
- (i) establishing, maintaining, and operating the database;
 - (ii) access to the database and how access is obtained; and
 - (iii) control of information contained in the database.

(4) The pharmacist in charge shall, regarding each controlled substance dispensed by a pharmacist under his supervision other than those dispensed for an inpatient at a health care facility, submit to the manager of the database the following information, by a procedure and in a format established by the division:

- (a) name of the prescribing practitioner;
- (b) date of the prescription;

- (c) date the prescription was filled;
 - (d) name of the person for whom the prescription was written;
 - (e) positive identification of the person receiving the prescription, including the type of identification and any identifying numbers on the identification;
 - (f) name of the controlled substance;
 - (g) quantity of controlled substance prescribed;
 - (h) strength of controlled substance;
 - (i) quantity of controlled substance dispensed;
 - (j) dosage quantity and frequency as prescribed;
 - (k) name of drug outlet dispensing the controlled substance;
 - (l) name of pharmacist dispensing the controlled substance; and
 - (m) other relevant information as required by division rule.
- (5) The division shall maintain the database in an electronic file or by other means established by the division to facilitate use of the database for identification of:
- (a) prescribing practices and patterns of prescribing and dispensing controlled substances;
 - (b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;
 - (c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance; and
 - (d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a drug outlet.
- (6) (a) The division shall by rule establish the electronic format in which the information required under this section shall be submitted to the administrator of the database.
- (b) The division shall ensure the database system records and maintains for reference:
 - (i) identification of each person who requests or receives information from the database;
 - (ii) the information provided to ~~[the requesting]~~ each person ~~[regarding each request]~~; and
 - (iii) the date and time ~~[of each request]~~ the information is requested or provided.

(7) The division shall make rules in collaboration with the committee to:

(a) effectively enforce the limitations on access to the database as described in Subsection (8); and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

(8) The manager of the database shall make information in the database available only to the following persons, and in accordance with the limitations stated and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substances laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) a licensed practitioner having authority to prescribe controlled substances, to the extent the information [requested] relates specifically to a current patient of the practitioner, to whom the practitioner is prescribing or considering prescribing any controlled substance;

(d) a licensed pharmacist having authority to dispense controlled substances to the extent the information [requested] relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance;

(e) federal, state, and local law enforcement authorities engaged as a specified duty of their employment in enforcing laws regulating controlled substances; and

(f) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the database manager that the individual requesting the information is in fact the person about whom the data entry was made.

(9) Any person who knowingly and intentionally releases any information in the database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

(10) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a third degree felony.

(11) (a) A person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person or entity any information obtained from the database for any

purpose other than those specified in Subsection (8). Each separate violation of this subsection is a third degree felony and is also subject to a civil penalty not to exceed \$5,000.

(b) The procedure for determining a civil violation of this subsection shall be in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(c) Civil penalties assessed under this subsection shall be deposited in the General Fund.

(12) (a) The failure of a pharmacist in charge to submit information to the database as required under this section after the division has submitted a specific written request for the information or when the division determines the individual has a demonstrable pattern of failing to submit the information as required is grounds for the division to take the following actions in accordance with Section 58-1-401:

(i) refuse to issue a license to the individual;

(ii) refuse to renew the individual's license;

(iii) revoke, suspend, restrict, or place on probation the license;

(iv) issue a public or private reprimand to the individual;

(v) issue a cease and desist order; and

(vi) impose a civil penalty of not more than \$1,000 for each dispensed prescription regarding which the required information is not submitted.

(b) Civil penalties assessed under Subsection (12)(a)(vi) shall be deposited in the General Fund.

(c) The procedure for determining a civil violation of this subsection shall be in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(13) An individual who has submitted information to the database in accordance with this section may not be held civilly liable for having submitted the information.

(14) (a) All department and the division costs necessary to establish and operate the database shall be funded by appropriations from the General Fund.

(b) Funding for this section shall be appropriated without the use of any resources within the Commerce Service Fund.

(15) All costs associated with recording and submitting data as required in this section shall

be assumed by the submitting drug outlet.