ELECTRONIC PRESCRIBING ACT

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Peter C. Knudson

Cosponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill enacts the Electronic Prescribing Act within Title 58, Occupations and Professions.

Highlighted Provisions:

This bill:

- defines terms;
- requires a practitioner to provide each existing patient of the practitioner with the option to participate in electronic prescribing, if the practitioner prescribes a drug or device for the patient on or after July 1, 2012;
- provides that a practitioner may not issue a prescription through electronic prescribing for a drug or device that the practitioner is prohibited by federal law or federal rule from issuing through electronic prescribing;
- requires a pharmacy to accept and comply with an electronic prescription that is transmitted in accordance with the requirements of this section and rules made by the Division of Occupational and Professional Licensing; and
- grants rulemaking authority to the Division of Occupational and Professional Licensing to:
  - enforce the provisions of this bill;
  - ensure that electronic prescribing is done in a secure manner, consistent with industry standards;
  - ensure that each patient is fully informed of the patient's rights, restrictions, and

obligations pertaining to electronic prescribing; and

- grant a hardship exemption to a pharmacy or a practitioner, to the extent that the requirements of this bill would impose an extreme financial hardship on the pharmacy or the practitioner.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2012.

Utah Code Sections Affected:

ENACTS:

58-78-101, Utah Code Annotated 1953

58-78-102, Utah Code Annotated 1953

58-78-201, Utah Code Annotated 1953

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

Section 1. Section **58-78-101** is enacted to read:

CHAPTER 78. ELECTRONIC PRESCRIBING ACT

Part 1. General Provisions

58-78-101. Title.

This chapter is known as the "Electronic Prescribing Act."

Section 2. Section **58-78-102** is enacted to read:

58-78-102. Definitions.

As used in this chapter:

(1) "Drug" is as defined in Section 58-37-2.

(2) "Electronic prescribing" means the electronic generation and transmission of a prescription between a practitioner and a pharmacy.

(3) "Existing patient" means a person who a practitioner has:

(a) obtained information regarding, in the usual course of professional practice, that is

sufficient to:

(i) establish a diagnoses;

(ii) identify conditions; and

(iii) identify contraindications to potential treatment; and

(b) accepted as a patient.

(4) (a) "Federal controlled substance" means a drug or substance included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any federal controlled substance analog.

(b) "Federal controlled substance" does not include:

(i) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title 32A, Alcoholic Beverage Control Act, regarding tobacco or food;

(ii) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(iii) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) (a) "Federal controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513:

(i) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances in the schedules set forth in Subsection (4); or

(ii) which, with respect to a particular individual, is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of

controlled substances in the schedules set forth in Subsection (4).

(b) "Federal controlled substance analog" does not include:

(i) a controlled substance currently scheduled in Schedules I through V of Section 58-37-4;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent the conduct with respect to the substance is permitted by the exemption;

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance;

(v) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(vi) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) "Pharmacy" is as defined in Section 58-17b-102.

(7) "Practitioner" means an individual currently licensed, registered, or otherwise authorized by the state to prescribe and administer a drug in the course of professional practice.

(8) "Prescription" is as defined in Section 58-37-2.

Section 3. Section **58-78-201** is enacted to read:

Part 2. Electronic Prescribing

58-78-201. Electronic prescriptions -- Restrictions -- Rulemaking authority.

(1) Subject to the provisions of this section, a practitioner shall provide each existing patient of the practitioner with the option of participating in electronic prescribing for

prescriptions issued for the patient, if the practitioner prescribes a drug or device for the patient on or after July 1, 2012.

(2) A practitioner may not issue a prescription through electronic prescribing for a drug, device, or federal controlled substance that the practitioner is prohibited by federal law or federal rule from issuing through electronic prescribing.

(3) A pharmacy shall:

(a) accept an electronic prescription that is transmitted in accordance with the requirements of this section and division rules; and

(b) dispense a drug or device as directed in an electronic prescription described in Subsection (3)(a).

(4) The division shall make rules to ensure that:

(a) except as provided in Subsection (5), practitioners and pharmacies comply with this section;

(b) electronic prescribing is conducted in a secure manner, consistent with industry standards; and

(c) each patient is fully informed of the patient's rights, restrictions, and obligations pertaining to electronic prescribing.

(5) The division may, by rule, grant an exemption from the requirements of this section to a pharmacy or a practitioner to the extent that the pharmacy or practitioner can establish, to the satisfaction of the division, that compliance with the requirements of this section would impose an extreme financial hardship on the pharmacy or practitioner.

Section 4. **Effective date.**

This bill takes effect on July 1, 2012.