

Representative Bradley M. Daw proposes the following substitute bill:

CONTROLLED SUBSTANCE DATABASE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies Title 58, Chapter 37f, Controlled Substance Database Act, regarding use of the database to obtain information from other states or the federal government, access to the database by designated employees and practitioners, and the entering of pain management contracts in the database.

Highlighted Provisions:

This bill:

- ▶ prohibits unauthorized use of the controlled substance database as a means of obtaining information from other states or a federal drug monitoring program;
- ▶ provides for the designation by a practitioner of persons who are employed by the same business as the practitioner to gain access to the database at the request of the practitioner; and
- ▶ provides a procedure for an emergency room employee to look up information in the database for a practitioner who is treating an emergency room patient.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **58-37f-301**, as last amended by Laws of Utah 2011, Chapters 38, 151, and 226

29 **58-37f-601**, as enacted by Laws of Utah 2010, Chapter 287

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

32 Section 1. Section **58-37f-301** is amended to read:

33 **58-37f-301. Access to database.**

34 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
35 Administrative Rulemaking Act, to:

36 (a) effectively enforce the limitations on access to the database as described in this
37 part; and

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

40 (2) The division shall make information in the database and information obtained from
41 other state or federal prescription monitoring programs by means of the database available only
42 to the following individuals, in accordance with the requirements of this chapter and division
43 rules:

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

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

49 (c) in accordance with a written agreement entered into with the department,
50 employees of the Department of Health:

51 (i) whom the director of the Department of Health assigns to conduct scientific studies
52 regarding the use or abuse of controlled substances, provided that the identity of the individuals
53 and pharmacies in the database are confidential and are not disclosed in any manner to any
54 individual who is not directly involved in the scientific studies; or

55 (ii) when the information is requested by the Department of Health in relation to a
56 person or provider whom the Department of Health suspects may be improperly obtaining or

57 providing a controlled substance;

58 (d) a licensed practitioner having authority to prescribe controlled substances, to the
59 extent the information:

60 (i) (A) relates specifically to a current or prospective patient of the practitioner; and

61 (B) is sought by the practitioner for the purpose of:

62 (I) prescribing or considering prescribing any controlled substance to the current or
63 prospective patient;

64 (II) diagnosing the current or prospective patient;

65 (III) providing medical treatment or medical advice to the current or prospective
66 patient; or

67 (IV) determining whether the current or prospective patient:

68 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

69 or

70 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
71 substance from the practitioner;

72 (ii) (A) relates specifically to a former patient of the practitioner; and

73 (B) is sought by the practitioner for the purpose of determining whether the former
74 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled
75 substance from the practitioner;

76 (iii) relates specifically to an individual who has access to the practitioner's Drug
77 Enforcement Administration identification number, and the practitioner suspects that the
78 individual may have used the practitioner's Drug Enforcement Administration identification
79 number to fraudulently acquire or prescribe a controlled substance;

80 (iv) relates to the practitioner's own prescribing practices, except when specifically
81 prohibited by the division by administrative rule;

82 (v) relates to the use of the controlled substance database by an employee of the
83 practitioner, described in Subsection (2)(e); or

84 (vi) relates to any use of the practitioner's Drug Enforcement Administration
85 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
86 controlled substance;

87 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in

88 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

89 (i) the employee is designated by the practitioner as an individual authorized to access
90 the information on behalf of the practitioner;

91 (ii) the practitioner provides written notice to the division of the identity of the
92 employee; and

93 (iii) the division:

94 (A) grants the employee access to the database; and

95 (B) provides the employee with a password that is unique to that employee to access
96 the database in order to permit the division to comply with the requirements of Subsection
97 58-37f-203(3)(b) with respect to the employee;

98 (f) an employee of the same business that employs a licensed practitioner under
99 Subsection (2)(d) if:

100 (i) the employee is designated by the practitioner as an individual authorized to access
101 the information on behalf of the practitioner;

102 (ii) the practitioner and the employing business provide written notice to the division of
103 the identity of the designated employee; and

104 (iii) the division:

105 (A) grants the employee access to the database; and

106 (B) provides the employee with a password that is unique to that employee to access
107 the database in order to permit the division to comply with the requirements of Subsection
108 58-37f-203(3)(b) with respect to the employee;

109 ~~(f)~~ (g) a licensed pharmacist having authority to dispense a controlled substance to
110 the extent the information is sought for the purpose of:

111 (i) dispensing or considering dispensing any controlled substance; or

112 (ii) determining whether a person:

113 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

114 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
115 substance from the pharmacist;

116 ~~(g)~~ (h) federal, state, and local law enforcement authorities, and state and local
117 prosecutors, engaged as a specified duty of their employment in enforcing laws:

118 (i) regulating controlled substances; or

119 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;
120 ~~[(h)]~~ (i) employees of the Office of Internal Audit and Program Integrity within the
121 Department of Health who are engaged in their specified duty of ensuring Medicaid program
122 integrity under Section 26-18-2.3;

123 ~~[(i)]~~ (j) a mental health therapist, if:

124 (i) the information relates to a patient who is:

125 (A) enrolled in a licensed substance abuse treatment program; and

126 (B) receiving treatment from, or under the direction of, the mental health therapist as
127 part of the patient's participation in the licensed substance abuse treatment program described
128 in Subsection (2)~~[(i)]~~(j)(i)(A);

129 (ii) the information is sought for the purpose of determining whether the patient is
130 using a controlled substance while the patient is enrolled in the licensed substance abuse
131 treatment program described in Subsection (2)~~[(i)]~~(j)(i)(A); and

132 (iii) the licensed substance abuse treatment program described in Subsection
133 (2)~~[(i)]~~(j)(i)(A) is associated with a practitioner who:

134 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
135 pharmacist; and

136 (B) is available to consult with the mental health therapist regarding the information
137 obtained by the mental health therapist, under this Subsection (2)~~[(i)]~~(j), from the database;

138 ~~[(j)]~~ (k) an individual who is the recipient of a controlled substance prescription
139 entered into the database, upon providing evidence satisfactory to the division that the
140 individual requesting the information is in fact the individual about whom the data entry was
141 made;

142 ~~[(k)]~~ (l) the inspector general, or a designee of the inspector general, of the Office of
143 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
144 Title 63J, Chapter 4a, Part 2, Office Duties and Powers; and

145 ~~[(l)]~~ (m) the following licensed physicians for the purpose of reviewing and offering an
146 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
147 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

148 (i) a member of the medical panel described in Section 34A-2-601; or

149 (ii) a physician offering a second opinion regarding treatment.

150 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three
151 employees to access information from the database under Subsection (2)(e), (2)(f), or (4)(c).

152 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
153 Administrative Rulemaking Act, to:

154 (i) establish background check procedures to determine whether an employee
155 designated under Subsection (2)(e)[(†)], (2)(f), or (4)(c) should be granted access to the
156 database[-]; and

157 (ii) establish the information to be provided by an emergency room employee under
158 Subsection (4).

159 (c) The division shall grant an employee designated under Subsection (2)(e)[(†)], (2)(f),
160 or (4)(c) access to the database, unless the division determines, based on a background check,
161 that the employee poses a security risk to the information contained in the database.

162 (4) (a) An individual who is employed in the emergency room of a hospital may
163 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
164 the individual is designated under Subsection (4)(c) and the licensed practitioner:

165 (i) is employed in the emergency room;

166 (ii) is treating an emergency room patient for an emergency medical condition; and

167 (iii) requests that an individual employed in the emergency room and designated under
168 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
169 course of treatment.

170 (b) The emergency room employee obtaining information from the database shall,
171 when gaining access to the database, provide to the database the name and any additional
172 identifiers regarding the requesting practitioner as required by division administrative rule
173 established under Subsection (3)(b).

174 (c) An individual employed in the emergency room under this Subsection (4) may
175 obtain information from the database as provided in Subsection (4)(a) if:

176 (i) the employee is designated by the practitioner as an individual authorized to access
177 the information on behalf of the practitioner;

178 (ii) the practitioner and the hospital operating the emergency room provide written
179 notice to the division of the identity of the designated employee; and

180 (iii) the division:

181 (A) grants the employee access to the database; and

182 (B) provides the employee with a password that is unique to that employee to access
183 the database in order to permit the division to comply with the requirements of Subsection
184 58-37f-203(3)(b) with respect to the employee.

185 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
186 practitioner who designates an employee under Subsection (2)(e)~~(f)~~, (2)(f), or (4)(c) to pay for
187 the costs incurred by the division to conduct the background check and make the determination
188 described in Subsection (3)(b).

189 ~~(4)~~ (5) (a) An individual who is granted access to the database based on the fact that
190 the individual is a licensed practitioner or a mental health therapist shall be denied access to the
191 database when the individual is no longer licensed.

192 (b) An individual who is granted access to the database based on the fact that the
193 individual is a designated employee of a licensed practitioner shall be denied access to the
194 database when the practitioner is no longer licensed.

195 Section 2. Section **58-37f-601** is amended to read:

196 **58-37f-601. Unlawful release or use of database information -- Criminal and civil**
197 **penalties.**

198 (1) Any person who knowingly and intentionally releases any information in the
199 database or knowingly and intentionally releases any information obtained from other state or
200 federal prescription monitoring programs by means of the database in violation of the
201 limitations under Part 3, Access, is guilty of a third degree felony.

202 (2) (a) Any person who obtains or attempts to obtain information from the database or
203 from any other state or federal prescription monitoring programs by means of the database by
204 misrepresentation or fraud is guilty of a third degree felony.

205 (b) Any person who obtains or attempts to obtain information from the database for a
206 purpose other than a purpose authorized by this chapter or by rule is guilty of a third degree
207 felony.

208 (3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and
209 intentionally use, release, publish, or otherwise make available to any other person any
210 information obtained from the database or from any other state or federal prescription
211 monitoring programs by means of the database for any purpose other than those specified in

212 Part 3, Access.

213 (b) Each separate violation of this Subsection (3) is a third degree felony and is also
214 subject to a civil penalty not to exceed \$5,000.

215 (c) The procedure for determining a civil violation of this Subsection (3) ~~shall be~~ is in
216 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

217 (d) Civil penalties assessed under this Subsection (3) shall be deposited in the General
218 Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

219 (e) ~~[Nothing in this]~~ This Subsection (3) ~~[prohibits]~~ does not prohibit a person who
220 obtains information from the database under Subsection 58-37f-301(2)(d) ~~[or]~~, (e), (f), or (4)(c)
221 from:

222 (i) including the information in the person's medical chart or file for access by a person
223 authorized to review the medical chart or file; or

224 (ii) providing the information to a person in accordance with the requirements of the
225 Health Insurance Portability and Accountability Act of 1996.