

PRESCRIPTION DRUG DATABASE ACCESS AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Controlled Substance Database Act to allow designees of the director of the Utah Department of Health to access the controlled substance database.

Highlighted Provisions:

This bill:

- ▶ allows the director of the Utah Department of Health to allow access to the controlled substance database to designated individuals conducting scientific studies regarding the use or abuse of controlled substances, provided that the individuals enter into a written agreement with the department; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37f-301, as last amended by Laws of Utah 2012, Chapters 174 and 239

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

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



28 **58-37f-301. Access to database.**

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

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

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

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

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

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

44 (c) in accordance with a written agreement entered into with the department,
45 employees of the Department of Health, or designees of the director of the Department of
46 Health:

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

51 (ii) when the information is requested by the Department of Health in relation to a
52 person or provider whom the Department of Health suspects may be improperly obtaining or
53 providing a controlled substance;

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

56 (i) (A) relates specifically to a current or prospective patient of the practitioner; and
57 (B) is sought by the practitioner for the purpose of:

58 (I) prescribing or considering prescribing any controlled substance to the current or

59 prospective patient;

60 (II) diagnosing the current or prospective patient;

61 (III) providing medical treatment or medical advice to the current or prospective

62 patient; or

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

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

65 or

66 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled

67 substance from the practitioner;

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

69 (B) is sought by the practitioner for the purpose of determining whether the former

70 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled

71 substance from the practitioner;

72 (iii) relates specifically to an individual who has access to the practitioner's Drug

73 Enforcement Administration identification number, and the practitioner suspects that the

74 individual may have used the practitioner's Drug Enforcement Administration identification

75 number to fraudulently acquire or prescribe a controlled substance;

76 (iv) relates to the practitioner's own prescribing practices, except when specifically

77 prohibited by the division by administrative rule;

78 (v) relates to the use of the controlled substance database by an employee of the

79 practitioner, described in Subsection (2)(e); or

80 (vi) relates to any use of the practitioner's Drug Enforcement Administration

81 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a

82 controlled substance;

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

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

85 (i) the employee is designated by the practitioner as an individual authorized to access

86 the information on behalf of the practitioner;

87 (ii) the practitioner provides written notice to the division of the identity of the

88 employee; and

89 (iii) the division:

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

91 (B) provides the employee with a password that is unique to that employee to access
92 the database in order to permit the division to comply with the requirements of Subsection
93 58-37f-203(3)(b) with respect to the employee;

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

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

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

100 (iii) the division:

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

102 (B) provides the employee with a password that is unique to that employee to access
103 the database in order to permit the division to comply with the requirements of Subsection
104 58-37f-203(3)(b) with respect to the employee;

105 (g) a licensed pharmacist having authority to dispense a controlled substance to the
106 extent the information is sought for the purpose of:

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

108 (ii) determining whether a person:

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

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

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

114 (i) regulating controlled substances;

115 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; or

116 (iii) providing information about a criminal defendant to defense counsel, upon request
117 during the discovery process, for the purpose of establishing a defense in a criminal case;

118 (i) employees of the Office of Internal Audit and Program Integrity within the
119 Department of Health who are engaged in their specified duty of ensuring Medicaid program
120 integrity under Section 26-18-2.3;

- 121 (j) a mental health therapist, if:
- 122 (i) the information relates to a patient who is:
- 123 (A) enrolled in a licensed substance abuse treatment program; and
- 124 (B) receiving treatment from, or under the direction of, the mental health therapist as
- 125 part of the patient's participation in the licensed substance abuse treatment program described
- 126 in Subsection (2)(j)(i)(A);
- 127 (ii) the information is sought for the purpose of determining whether the patient is
- 128 using a controlled substance while the patient is enrolled in the licensed substance abuse
- 129 treatment program described in Subsection (2)(j)(i)(A); and
- 130 (iii) the licensed substance abuse treatment program described in Subsection
- 131 (2)(j)(i)(A) is associated with a practitioner who:
- 132 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
- 133 pharmacist; and
- 134 (B) is available to consult with the mental health therapist regarding the information
- 135 obtained by the mental health therapist, under this Subsection (2)(j), from the database;
- 136 (k) an individual who is the recipient of a controlled substance prescription entered into
- 137 the database, upon providing evidence satisfactory to the division that the individual requesting
- 138 the information is in fact the individual about whom the data entry was made;
- 139 (l) the inspector general, or a designee of the inspector general, of the Office of
- 140 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
- 141 Title 63J, Chapter 4a, Part 2, Office Duties and Powers; and
- 142 (m) the following licensed physicians for the purpose of reviewing and offering an
- 143 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
- 144 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:
- 145 (i) a member of the medical panel described in Section 34A-2-601; or
- 146 (ii) a physician offering a second opinion regarding treatment.
- 147 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three
- 148 employees to access information from the database under Subsection (2)(e), (2)(f), or (4)(c).
- 149 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
- 150 Administrative Rulemaking Act, to:
- 151 (i) establish background check procedures to determine whether an employee

152 designated under Subsection (2)(e), (2)(f), or (4)(c) should be granted access to the database;
153 and

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

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

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

162 (i) is employed in the emergency room;

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

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

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

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

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

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

177 (iii) the division:

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

179 (B) provides the employee with a password that is unique to that employee to access
180 the database in order to permit the division to comply with the requirements of Subsection
181 58-37f-203(3)(b) with respect to the employee.

182 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a

183 practitioner who designates an employee under Subsection (2)(e), (2)(f), or (4)(c) to pay for the
184 costs incurred by the division to conduct the background check and make the determination
185 described in Subsection (3)(b).

186 (5) (a) An individual who is granted access to the database based on the fact that the
187 individual is a licensed practitioner or a mental health therapist shall be denied access to the
188 database when the individual is no longer licensed.

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

Legislative Review Note
as of 12-18-12 2:05 PM

Office of Legislative Research and General Counsel