

Representative Ronda Rudd Menlove proposes the following substitute bill:

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, if:
 - the individuals enter into a written agreement with the department; and
 - the identity of the individuals and pharmacies in the database are de-identified, confidential, and not disclosed to the designee; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **58-37f-301**, as last amended by Laws of Utah 2012, Chapters 174 and 239

27 **58-37f-601**, as last amended by Laws of Utah 2012, Chapter 174

28

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

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

31 **58-37f-301. Access to database.**

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

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

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

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

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

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

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

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

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

56 (d) in accordance with a written agreement entered into with the department, a

57 designee of the director of the Department of Health, who is not an employee of the
58 Department of Health, whom the director of the Department of Health assigns to conduct
59 scientific studies regarding the use or abuse of controlled substances, if the identity of the
60 individuals and pharmacies in the database are de-identified and confidential and are not
61 disclosed in any manner to the designee or any individual who is not directly involved in the
62 scientific studies;

63 [~~(d)~~] (e) a licensed practitioner having authority to prescribe controlled substances, to
64 the extent the information:

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

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

67 (I) prescribing or considering prescribing any controlled substance to the current or
68 prospective patient;

69 (II) diagnosing the current or prospective patient;

70 (III) providing medical treatment or medical advice to the current or prospective
71 patient; or

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

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

74 or

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

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

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

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

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

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

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

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

92 ~~(e)~~ (f) in accordance with Subsection (3)(a), an employee of a practitioner described
93 in Subsection (2)~~(d)~~(e), for a purpose described in Subsection (2)~~(d)~~(e)(i) or (ii), if:

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

96 (ii) the practitioner provides written notice to the division of the identity of the
97 employee; and

98 (iii) the division:

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

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

103 ~~(f)~~ (g) an employee of the same business that employs a licensed practitioner under
104 Subsection (2)~~(d)~~(e) if:

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

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

109 (iii) the division:

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

111 (B) provides the employee with a password that is unique to that employee to access
112 the database in order to permit the division to comply with the requirements of Subsection
113 58-37f-203(3)(b) with respect to the employee;

114 ~~(g)~~ (h) a licensed pharmacist having authority to dispense a controlled substance to
115 the extent the information is sought for the purpose of:

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

117 (ii) determining whether a person:

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

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

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

123 (i) regulating controlled substances;

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

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

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

130 ~~(j)~~ (k) a mental health therapist, if:

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

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

133 (B) receiving treatment from, or under the direction of, the mental health therapist as
134 part of the patient's participation in the licensed substance abuse treatment program described
135 in Subsection (2)~~(j)~~(k)(i)(A);

136 (ii) the information is sought for the purpose of determining whether the patient is
137 using a controlled substance while the patient is enrolled in the licensed substance abuse
138 treatment program described in Subsection (2)~~(j)~~(k)(i)(A); and

139 (iii) the licensed substance abuse treatment program described in Subsection
140 (2)~~(j)~~(k)(i)(A) is associated with a practitioner who:

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

143 (B) is available to consult with the mental health therapist regarding the information
144 obtained by the mental health therapist, under this Subsection (2)(j), from the database;

145 ~~(k)~~ (l) an individual who is the recipient of a controlled substance prescription
146 entered into the database, upon providing evidence satisfactory to the division that the
147 individual requesting the information is in fact the individual about whom the data entry was
148 made;

149 ~~(l)~~ (m) the inspector general, or a designee of the inspector general, of the Office of

150 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
151 Title 63J, Chapter 4a, Part 2, Office Duties and Powers; and

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

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

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

158 (3) (a) A practitioner described in Subsection (2)~~[(d)]~~(e) may designate up to three
159 employees to access information from the database under Subsection ~~[(2)(e);~~ (2)(f), (2)(g), or
160 (4)(c).

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

163 (i) establish background check procedures to determine whether an employee
164 designated under Subsection ~~[(2)(e);~~ (2)(f), (2)(g), or (4)(c) should be granted access to the
165 database; and

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

168 (c) The division shall grant an employee designated under Subsection ~~[(2)(e);~~ (2)(f),
169 (2)(g), or (4)(c) access to the database, unless the division determines, based on a background
170 check, that the employee poses a security risk to the information contained in the database.

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

174 (i) is employed in the emergency room;

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

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

179 (b) The emergency room employee obtaining information from the database shall,
180 when gaining access to the database, provide to the database the name and any additional

181 identifiers regarding the requesting practitioner as required by division administrative rule
182 established under Subsection (3)(b).

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

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

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

189 (iii) the division:

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

191 (B) provides the employee with a password that is unique to that employee to access
192 the database in order to permit the division to comply with the requirements of Subsection
193 58-37f-203(3)(b) with respect to the employee.

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

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

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

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

205 **58-37f-601. Unlawful release or use of database information -- Criminal and civil**
206 **penalties.**

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

211 (2) (a) Any person who obtains or attempts to obtain information from the database or

212 from any other state or federal prescription monitoring programs by means of the database by
213 misrepresentation or fraud is guilty of a third degree felony.

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

217 (3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and
218 intentionally use, release, publish, or otherwise make available to any other person any
219 information obtained from the database or from any other state or federal prescription
220 monitoring programs by means of the database for any purpose other than those specified in
221 Part 3, Access.

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

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

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

228 (e) This Subsection (3) does not prohibit a person who obtains information from the
229 database under Subsection 58-37f-301(2)[~~(d)~~](e), (f), (g) or (4)(c) from:

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

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