

1                   **CONTROLLED SUBSTANCE DATABASE MODIFICATIONS**

2                                   2014 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Evan J. Vickers**

5                                   House Sponsor: Bradley G. Last

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7 **LONG TITLE**

8 **General Description:**

9                   This bill modifies the Controlled Substance Database Act regarding access by pharmacy  
10 technicians.

11 **Highlighted Provisions:**

12                   This bill:

13                   ▶ allows the pharmacist-in-charge to designate a licensed pharmacy technician to have  
14 access to the database on behalf of the pharmacist in accordance with statutory  
15 requirements.

16 **Money Appropriated in this Bill:**

17                   None

18 **Other Special Clauses:**

19                   None

20 **Utah Code Sections Affected:**

21 AMENDS:

22                   **58-37f-301**, as last amended by Laws of Utah 2013, Chapters 12, 130, and 262

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

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

26                   **58-37f-301. Access to database.**

27                   (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah



28 Administrative Rulemaking Act, to:

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

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

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

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

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

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

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

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

51 (d) in accordance with a written agreement entered into with the department, a  
52 designee of the director of the Department of Health, who is not an employee of the  
53 Department of Health, whom the director of the Department of Health assigns to conduct  
54 scientific studies regarding the use or abuse of controlled substances pursuant to an application  
55 process established in rule by the Department of Health, if:

56 (i) the designee provides explicit information to the Department of Health regarding  
57 the purpose of the scientific studies;

58 (ii) the scientific studies to be conducted by the designee:

59 (A) fit within the responsibilities of the Department of Health for health and welfare;

60 (B) are reviewed and approved by an Institutional Review Board that is approved for  
61 human subject research by the United States Department of Health and Human Services; and

62 (C) are not conducted for profit or commercial gain; and

63 (D) are conducted in a research facility, as defined by division rule, that is associated  
64 with a university or college in the state accredited by the Northwest Commission on Colleges  
65 and Universities;

66 (iii) the designee protects the information as a business associate of the Department of  
67 Health; and

68 (iv) the identity of the prescribers, patients, and pharmacies in the database are  
69 de-identified, confidential, not disclosed in any manner to the designee or to any individual  
70 who is not directly involved in the scientific studies;

71 (e) a licensed practitioner having authority to prescribe controlled substances, to the  
72 extent the information:

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

74 (B) is provided to or sought by the practitioner for the purpose of:

75 (I) prescribing or considering prescribing any controlled substance to the current or  
76 prospective patient;

77 (II) diagnosing the current or prospective patient;

78 (III) providing medical treatment or medical advice to the current or prospective  
79 patient; or

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

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

82 or

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

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

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

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

90 Enforcement Administration identification number, and the practitioner suspects that the  
91 individual may have used the practitioner's Drug Enforcement Administration identification  
92 number to fraudulently acquire or prescribe a controlled substance;

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

95 (v) relates to the use of the controlled substance database by an employee of the  
96 practitioner, described in Subsection (2)(f); or

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

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

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

104 (ii) the practitioner provides written notice to the division of the identity of the  
105 employee; and

106 (iii) the division:

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

108 (B) provides the employee with a password that is unique to that employee to access  
109 the database in order to permit the division to comply with the requirements of Subsection  
110 [58-37f-203\(3\)\(b\)](#) with respect to the employee;

111 (g) an employee of the same business that employs a licensed practitioner under  
112 Subsection (2)(e) if:

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

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

117 (iii) the division:

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

119 (B) provides the employee with a password that is unique to that employee to access  
120 the database in order to permit the division to comply with the requirements of Subsection

121 [58-37f-203\(3\)\(b\)](#) with respect to the employee;

122 (h) a licensed pharmacist having authority to dispense a controlled substance to the  
123 extent the information is provided or sought for the purpose of:

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

125 (ii) determining whether a person:

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

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

129 (i) in accordance with Subsection (3)(a), a licensed pharmacy technician who is an  
130 employee of a pharmacy as defined in Section [58-17b-102](#), for the purposes described in  
131 Subsection (2)(h)(i) or (ii), if:

132 (i) the employee is designated by the pharmacist-in-charge as an individual authorized  
133 to access the information on behalf of a licensed pharmacist employed by the pharmacy;

134 (ii) the pharmacist-in-charge provides written notice to the division of the identity of  
135 the employee; and

136 (iii) the division:

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

138 (B) provides the employee with a password that is unique to that employee to access  
139 the database in order to permit the division to comply with the requirements of Subsection  
140 [58-37f-203\(3\)\(b\)](#) with respect to the employee;

141 [~~(i)~~] (j) federal, state, and local law enforcement authorities, and state and local  
142 prosecutors, engaged as a specified duty of their employment in enforcing laws:

143 (i) regulating controlled substances;

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

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

147 [~~(j)~~] (k) employees of the Office of Internal Audit and Program Integrity within the  
148 Department of Health who are engaged in their specified duty of ensuring Medicaid program  
149 integrity under Section [26-18-2.3](#);

150 [~~(k)~~] (l) a mental health therapist, if:

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

152 (A) enrolled in a licensed substance abuse treatment program; and  
153 (B) receiving treatment from, or under the direction of, the mental health therapist as  
154 part of the patient's participation in the licensed substance abuse treatment program described  
155 in Subsection (2)(k)(i)(A);

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

159 (iii) the licensed substance abuse treatment program described in Subsection  
160 (2)(k)(i)(A) is associated with a practitioner who:

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

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

165 ~~(t)~~ (m) an individual who is the recipient of a controlled substance prescription  
166 entered into the database, upon providing evidence satisfactory to the division that the  
167 individual requesting the information is in fact the individual about whom the data entry was  
168 made;

169 ~~(m)~~ (n) the inspector general, or a designee of the inspector general, of the Office of  
170 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in  
171 Title 63A, Chapter 13, Part 2, Office and Powers; and

172 ~~(n)~~ (o) the following licensed physicians for the purpose of reviewing and offering an  
173 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter  
174 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

177 (3) (a) A practitioner described in Subsection (2)(e) may designate up to three  
178 employees to access information from the database under Subsection (2)(f), (2)(g), (2)(i), or  
179 (4)(c).

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

182 (i) establish background check procedures to determine whether an employee

183 designated under Subsection (2)(f), (2)(g), or (4)(c) should be granted access to the database;  
184 and

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

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

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

193 (i) is employed in the emergency room;

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

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

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

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

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

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

208 (iii) the division:

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

210 (B) provides the employee with a password that is unique to that employee to access  
211 the database in order to permit the division to comply with the requirements of Subsection  
212 [58-37f-203\(3\)\(b\)](#) with respect to the employee.

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

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

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

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

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**Legislative Review Note**  
**as of 2-3-14 2:18 PM**

**Office of Legislative Research and General Counsel**