

Senator Todd Weiler proposes the following substitute bill:

**DEATH REPORTING AND INVESTIGATION INFORMATION
REGARDING CONTROLLED SUBSTANCES**

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill provides for the notification of a practitioner when the medical examiner determines that a death resulted from poisoning or overdose involving a controlled substance that the practitioner may have prescribed to the decedent.

Highlighted Provisions:

This bill:

- ▶ requires the medical examiner to provide a report to the Division of Occupational and Professional Licensing (DOPL) when the medical examiner determines that a death resulted from poisoning or overdose involving a prescribed controlled substance;

- ▶ requires that, when DOPL receives a report described in the preceding paragraph, DOPL shall notify each practitioner who may have written a prescription for the controlled substance involved in the poisoning or overdose;

- ▶ amends the Controlled Substance Database Act to allow a person for whom a controlled substance is prescribed to designate a third party who is to be notified when a controlled substance prescription is dispensed to the person;

- ▶ authorizes the Division of Occupational and Professional Licensing to make



26 administrative rules to facilitate implementation of this provision;

27 ▶ allows probation and parole officers to obtain information in the controlled
28 substance database without a warrant;

29 ▶ allows the division to provide information to law enforcement officers engaged in
30 specified types of investigations; and

31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **58-37f-301**, as last amended by Laws of Utah 2015, Chapters 89, 326, and 336

39 **58-37f-702**, as enacted by Laws of Utah 2010, Chapter 290 and renumbered and
40 amended by Coordination Clause, Laws of Utah 2010, Chapter 290

41 ENACTS:

42 **26-4-10.5**, Utah Code Annotated 1953



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

45 Section 1. Section **26-4-10.5** is enacted to read:

46 **26-4-10.5. Medical examiner to report death caused by prescribed controlled**
47 **substance poisoning or overdose.**

48 (1) If a medical examiner determines that the death of a person who is 12 years of age
49 or older at the time of death resulted from poisoning or overdose involving a prescribed
50 controlled substance, the medical examiner shall, within three business days after the day on
51 which the medical examiner determines the cause of death, send a written report to the
52 Division of Occupational and Professional Licensing, created in Section **58-1-103**, that
53 includes:

54 (a) the decedent's name;

55 (b) each drug or other substance found in the decedent's system that may have
56 contributed to the poisoning or overdose, if known; and

57 (c) the name of each person the medical examiner has reason to believe may have
58 prescribed a controlled substance described in Subsection (1)(b) to the decedent.

59 (2) This section does not create a new cause of action.

60 Section 2. Section **58-37f-301** is amended to read:

61 **58-37f-301. Access to database.**

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

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

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

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

72 (a) (i) personnel of the division specifically assigned to conduct investigations related
73 to controlled substance laws under the jurisdiction of the division;

74 (ii) the following law enforcement officers, but the division may only provide
75 nonidentifying information, such as gender, year of birth, and postal ZIP code, regarding
76 individuals for whom a controlled substance has been prescribed or to whom a controlled
77 substance has been dispensed:

78 (A) a law enforcement agency officer who is engaged in a joint investigation with the
79 division; and

80 (B) a law enforcement agency officer to whom the division has referred a suspected
81 criminal violation of controlled substance laws.

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

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

87 (i) whom the director of the Department of Health assigns to conduct scientific studies

88 regarding the use or abuse of controlled substances, if the identity of the individuals and
89 pharmacies in the database are confidential and are not disclosed in any manner to any
90 individual who is not directly involved in the scientific studies; or

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

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

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

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

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

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

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

106 (D) are conducted in a research facility, as defined by division rule, that is associated
107 with a university or college in the state accredited by one or more regional or national
108 accrediting agencies recognized by the United States Department of Education;

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

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

114 (e) in accordance with the written agreement entered into with the department and the
115 Department of Health, authorized employees of a managed care organization, as defined in 42
116 C.F.R. Sec. 438, if:

117 (i) the managed care organization contracts with the Department of Health under the
118 provisions of Section [26-18-405](#) and the contract includes provisions that:

119 (A) require a managed care organization employee who will have access to information
120 from the database to submit to a criminal background check; and

121 (B) limit the authorized employee of the managed care organization to requesting either
122 the division or the Department of Health to conduct a search of the database regarding a
123 specific Medicaid enrollee and to report the results of the search to the authorized employee;
124 and

125 (ii) the information is requested by an authorized employee of the managed care
126 organization in relation to a person who is enrolled in the Medicaid program with the managed
127 care organization, and the managed care organization suspects the person may be improperly
128 obtaining or providing a controlled substance;

129 (f) a licensed practitioner having authority to prescribe controlled substances, to the
130 extent the information:

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

133 (I) prescribing or considering prescribing any controlled substance to the current or
134 prospective patient;

135 (II) diagnosing the current or prospective patient;

136 (III) providing medical treatment or medical advice to the current or prospective
137 patient; or

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

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

140 or

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

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

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

147 (iii) relates specifically to an individual who has access to the practitioner's Drug
148 Enforcement Administration identification number, and the practitioner suspects that the
149 individual may have used the practitioner's Drug Enforcement Administration identification

150 number to fraudulently acquire or prescribe a controlled substance;

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

153 (v) relates to the use of the controlled substance database by an employee of the
154 practitioner, described in Subsection (2)(g); or

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

158 (g) in accordance with Subsection (3)(a), an employee of a practitioner described in
159 Subsection (2)(f), for a purpose described in Subsection (2)(f)(i) or (ii), if:

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

162 (ii) the practitioner provides written notice to the division of the identity of the
163 employee; and

164 (iii) the division:

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

166 (B) provides the employee with a password that is unique to that employee to access
167 the database in order to permit the division to comply with the requirements of Subsection
168 58-37f-203(5) with respect to the employee;

169 (h) an employee of the same business that employs a licensed practitioner under
170 Subsection (2)(f) if:

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

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

175 (iii) the division:

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

177 (B) provides the employee with a password that is unique to that employee to access
178 the database in order to permit the division to comply with the requirements of Subsection
179 58-37f-203(5) with respect to the employee;

180 (i) a licensed pharmacist having authority to dispense a controlled substance to the

181 extent the information is provided or sought for the purpose of:

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

183 (ii) determining whether a person:

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

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

187 (j) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy
188 intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the purposes
189 described in Subsection (2)(h)(i) or (ii), if:

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

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

194 (iii) the division:

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

196 (B) provides the employee with a password that is unique to that employee to access
197 the database in order to permit the division to comply with the requirements of Subsection
198 58-37f-203(5) with respect to the employee;

199 (k) pursuant to a valid search warrant, federal, state, and local law enforcement
200 [~~agencies~~] officers and state and local prosecutors [~~that~~] who are engaged in an investigation
201 related to:

202 (i) one or more controlled substances; and

203 (ii) a specific person who is a subject of the investigation;

204 (l) a probation or parole officer employed by the Department of Corrections or by a
205 political subdivision is not required to obtain a search warrant to gain access to database
206 information necessary for the officer's supervision of a specific probationer or parolee who is
207 under the officer's direct supervision;

208 [~~(h)~~] (m) employees of the Office of Internal Audit and Program Integrity within the
209 Department of Health who are engaged in their specified duty of ensuring Medicaid program
210 integrity under Section 26-18-2.3;

211 [~~(m)~~] (n) a mental health therapist, if:

212 (i) the information relates to a patient who is:
213 (A) enrolled in a licensed substance abuse treatment program; and
214 (B) receiving treatment from, or under the direction of, the mental health therapist as
215 part of the patient's participation in the licensed substance abuse treatment program described
216 in Subsection (2)(~~m~~)(n)(i)(A);

217 (ii) the information is sought for the purpose of determining whether the patient is
218 using a controlled substance while the patient is enrolled in the licensed substance abuse
219 treatment program described in Subsection (2)(~~m~~)(n)(i)(A); and

220 (iii) the licensed substance abuse treatment program described in Subsection
221 (2)(m)(i)(A) is associated with a practitioner who:

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

224 (B) is available to consult with the mental health therapist regarding the information
225 obtained by the mental health therapist, under this Subsection (2)(~~m~~)(n), from the database;

226 ~~(m)~~ (o) an individual who is the recipient of a controlled substance prescription
227 entered into the database, upon providing evidence satisfactory to the division that the
228 individual requesting the information is in fact the individual about whom the data entry was
229 made;

230 ~~(o)~~ (p) an individual under Subsection (2)(~~m~~)(o) for the purpose of obtaining a list of
231 the persons and entities that have requested or received any information from the database
232 regarding the individual, except if the individual's record is subject to a pending or current
233 investigation as authorized under this Subsection (2);

234 ~~(p)~~ (q) the inspector general, or a designee of the inspector general, of the Office of
235 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
236 Title 63A, Chapter 13, Part 2, Office and Powers; and

237 ~~(q)~~ (r) the following licensed physicians for the purpose of reviewing and offering an
238 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
239 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

241 (ii) a physician employed as medical director for a licensed workers' compensation
242 insurer or an approved self-insured employer; or

243 (iii) a physician offering a second opinion regarding treatment.

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

246 (ii) A pharmacist described in Subsection (2)(i) who is a pharmacist-in-charge may
247 designate up to five employees to access information from the database under Subsection (2)(j).

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

250 (i) establish background check procedures to determine whether an employee
251 designated under Subsection (2)(g), (2)(h), or (4)(c) should be granted access to the database;
252 and

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

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

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

261 (i) is employed in the emergency room;

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

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

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

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

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

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

276 (iii) the division:

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

278 (B) provides the employee with a password that is unique to that employee to access
279 the database in order to permit the division to comply with the requirements of Subsection
280 [58-37f-203\(5\)](#) with respect to the employee.

281 (d) The division may impose a fee, in accordance with Section [63J-1-504](#), on a
282 practitioner who designates an employee under Subsection (2)(g), (2)(h), or (4)(c) to pay for the
283 costs incurred by the division to conduct the background check and make the determination
284 described in Subsection (3)(b).

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

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

291 Section 3. Section [58-37f-702](#) is amended to read:

292 **[58-37f-702. Reporting prescribed controlled substance poisoning or overdose to a](#)**
293 **[practitioner.](#)**

294 (1) [~~Beginning on July 1, 2012,~~] The division shall take the actions described in
295 Subsection (2) if the division receives a report from:

296 (a) a medical examiner under Section [26-4-10.5](#) regarding a death caused by poisoning
297 or overdose involving a prescribed controlled substance; or

298 (b) a general acute hospital under Section [26-21-26](#)[;] regarding admission to a general
299 acute hospital for poisoning or overdose involving a prescribed controlled substance[~~, the~~].

300 (2) The division shall, within three business days after the day on which [~~the~~] a report
301 in Subsection (1) is received:

302 (a) attempt to identify, through the database, each practitioner who may have
303 prescribed the controlled substance to the patient; and

304 (b) provide each practitioner identified under Subsection [~~(1)~~] (2)(a) with:

305 (i) a copy of the report provided by the medical examiner under Section 26-4-10.5 or
306 the general acute hospital under Section 26-21-26; and

307 (ii) the information obtained from the database that led the division to determine that
308 the practitioner receiving the information may have prescribed the controlled substance to the
309 person named in the report.

310 [~~2~~] (3) It is the intent of the Legislature that the information provided under
311 Subsection [~~1~~] (2)(b) is provided for the purpose of assisting the practitioner in:

312 (a) discussing with the patient or others issues relating to the poisoning or overdose;

313 (b) advising the patient or others of measures that may be taken to avoid a future
314 poisoning or overdose; and

315 (c) making decisions regarding future prescriptions written for the patient or others.

316 [~~3~~] (4) Beginning on July 1, 2010, the division shall, in accordance with Section
317 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup
318 and ongoing costs of the division for complying with the requirements of this section.