

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;

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

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



26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **58-37f-301**, as last amended by Laws of Utah 2015, Chapters 89, 326, and 336

34 **58-37f-702**, as enacted by Laws of Utah 2010, Chapter 290 and renumbered and
35 amended by Coordination Clause, Laws of Utah 2010, Chapter 290

36 ENACTS:

37 **26-4-10.5**, Utah Code Annotated 1953



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

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

41 **26-4-10.5. Medical examiner to report death caused by prescribed controlled**
42 **substance poisoning or overdose.**

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

49 (a) the decedent's name;

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

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

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

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

56 **58-37f-301. Access to database.**

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

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

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

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

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

69 (ii) the following law enforcement officers, but the division may only provide
70 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding
71 individuals for whom a controlled substance has been prescribed or to whom a controlled
72 substance has been dispensed:

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

75 (B) a law enforcement agency officer to whom the division has referred a suspected
76 criminal violation of controlled substance laws;

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

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

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

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

88 providing a controlled substance;

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

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

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

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

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

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

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

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

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

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

112 (i) the managed care organization contracts with the Department of Health under the
113 provisions of Section 26-18-405 and the contract includes provisions that:

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

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

119 and

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

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

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

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

128 (I) prescribing or considering prescribing any controlled substance to the current or
129 prospective patient;

130 (II) diagnosing the current or prospective patient;

131 (III) providing medical treatment or medical advice to the current or prospective
132 patient; or

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

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

135 or

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

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

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

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

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

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

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

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

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

157 (ii) the practitioner provides written notice to the division of the identity of the
158 employee; and

159 (iii) the division:

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

161 (B) provides the employee with a password that is unique to that employee to access
162 the database in order to permit the division to comply with the requirements of Subsection
163 58-37f-203(5) with respect to the employee;

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

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

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

170 (iii) the division:

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

172 (B) provides the employee with a password that is unique to that employee to access
173 the database in order to permit the division to comply with the requirements of Subsection
174 58-37f-203(5) with respect to the employee;

175 (i) a licensed pharmacist having authority to dispense a controlled substance to the
176 extent the information is provided or sought for the purpose of:

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

178 (ii) determining whether a person:

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

180 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled

181 substance from the pharmacist;

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

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

187 (ii) the pharmacist-in-charge provides written notice to the division of the identity of
188 the 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(5) with respect to the employee;

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

197 (i) one or more controlled substances; and

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

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

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

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

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

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

209 (B) receiving treatment from, or under the direction of, the mental health therapist as
210 part of the patient's participation in the licensed substance abuse treatment program described
211 in Subsection (2)[~~(m)~~](n)(i)(A);

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

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

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

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

221 ~~(n)~~ (o) an individual who is the recipient of a controlled substance prescription
222 entered into the database, upon providing evidence satisfactory to the division that the
223 individual requesting the information is in fact the individual about whom the data entry was
224 made;

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

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

232 ~~(q)~~ (r) the following licensed physicians for the purpose of reviewing and offering an
233 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
234 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

235 (i) a member of the medical panel described in Section [34A-2-601](#);

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

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

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

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

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

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

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

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

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

256 (i) is employed in the emergency room;

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

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

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

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

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

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

271 (iii) the division:

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

273 (B) provides the employee with a password that is unique to that employee to access

274 the database in order to permit the division to comply with the requirements of Subsection
275 [58-37f-203](#)(5) with respect to the employee.

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

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

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

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

287 **[58-37f-702](#). Reporting prescribed controlled substance poisoning or overdose to a
288 practitioner.**

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

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

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

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

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

299 (b) provide each practitioner identified under Subsection [(+)] (2)(a) with:

300 (i) a copy of the report provided by the medical examiner under Section [26-4-10.5](#) or
301 the general acute hospital under Section [26-21-26](#); and

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

305 ~~[(2)]~~ (3) It is the intent of the Legislature that the information provided under
306 Subsection ~~[(1)]~~ (2)(b) is provided for the purpose of assisting the practitioner in:
307 (a) discussing with the patient or others issues relating to the poisoning or overdose;
308 (b) advising the patient or others of measures that may be taken to avoid a future
309 poisoning or overdose; and
310 (c) making decisions regarding future prescriptions written for the patient or others.

311 ~~[(3)]~~ (4) Beginning on July 1, 2010, the division shall, in accordance with Section
312 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup
313 and ongoing costs of the division for complying with the requirements of this section.

314 Section 4. **Effective date.**

315 This bill takes effect on October 31, 2016.