

**Representative Raymond P. Ward** proposes the following substitute bill:

**OPIOID PRESCRIBING REGULATIONS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Raymond P. Ward**

Senate Sponsor: Evan J. Vickers

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**LONG TITLE**

**General Description:**

This bill amends the Division of Occupational and Professional Licensing Act related to the prescribing of certain controlled substances.

**Highlighted Provisions:**

This bill:

- ▶ limits the number of days for which an opiate may be prescribed for certain individuals;
- ▶ removes an outdated provision from the Utah Controlled Substances Act related to opiate prescribing; and
- ▶ amends provisions of the Controlled Substance Database Act related to provider use of the database.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-37-6**, as last amended by Laws of Utah 2014, Chapter 78



26 **58-37f-301**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 5  
27 **58-37f-304**, as enacted by Laws of Utah 2016, Chapter 275



28  
29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **58-37-6** is amended to read:

31 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**  
32 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**  
33 **required -- Prescriptions.**

34 (1) (a) The division may adopt rules relating to the licensing and control of the  
35 manufacture, distribution, production, prescription, administration, dispensing, conducting of  
36 research with, and performing of laboratory analysis upon controlled substances within this  
37 state.

38 (b) The division may assess reasonable fees to defray the cost of issuing original and  
39 renewal licenses under this chapter pursuant to Section **63J-1-504**.

40 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,  
41 administers, conducts research with, or performs laboratory analysis upon any controlled  
42 substance in Schedules I through V within this state, or who proposes to engage in  
43 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting  
44 research with, or performing laboratory analysis upon controlled substances included in  
45 Schedules I through V within this state shall obtain a license issued by the division.

46 (ii) The division shall issue each license under this chapter in accordance with a  
47 two-year renewal cycle established by rule. The division may by rule extend or shorten a  
48 renewal period by as much as one year to stagger the renewal cycles it administers.

49 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,  
50 administer, conduct research with, or perform laboratory analysis upon controlled substances in  
51 Schedules I through V within this state may possess, manufacture, produce, distribute,  
52 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon  
53 those substances to the extent authorized by their license and in conformity with this chapter.

54 (c) The following persons are not required to obtain a license and may lawfully possess  
55 controlled substances included in Schedules II through V under this section:

56 (i) an agent or employee, except a sales representative, of any registered manufacturer,

57 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the  
58 usual course of the person's business or employment; however, nothing in this subsection shall  
59 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an  
60 inventory of controlled substances separate from the location of the person's employer's  
61 registered and licensed place of business;

62 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or  
63 warehouseman, who possesses any controlled substance in the usual course of the person's  
64 business or employment; and

65 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to  
66 a lawful order of a practitioner.

67 (d) The division may enact rules waiving the license requirement for certain  
68 manufacturers, producers, distributors, prescribers, dispensers, administrators, research  
69 practitioners, or laboratories performing analysis if consistent with the public health and safety.

70 (e) A separate license is required at each principal place of business or professional  
71 practice where the applicant manufactures, produces, distributes, dispenses, conducts research  
72 with, or performs laboratory analysis upon controlled substances.

73 (f) The division may enact rules providing for the inspection of a licensee or applicant's  
74 establishment, and may inspect the establishment according to those rules.

75 (3) (a) (i) Upon proper application, the division shall license a qualified applicant to  
76 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon  
77 controlled substances included in Schedules I through V, unless it determines that issuance of a  
78 license is inconsistent with the public interest.

79 (ii) The division may not issue a license to any person to prescribe, dispense, or  
80 administer a Schedule I controlled substance except under Subsection (3)(a)(i).

81 (iii) In determining public interest under this Subsection (3)(a), the division shall  
82 consider whether or not the applicant has:

83 (A) maintained effective controls against diversion of controlled substances and any  
84 Schedule I or II substance compounded from any controlled substance into other than  
85 legitimate medical, scientific, or industrial channels;

86 (B) complied with applicable state and local law;

87 (C) been convicted under federal or state laws relating to the manufacture, distribution,

88 or dispensing of substances;

89 (D) past experience in the manufacture of controlled dangerous substances;

90 (E) established effective controls against diversion; and

91 (F) complied with any other factors that the division establishes that promote the public  
92 health and safety.

93 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,  
94 produce, distribute, conduct research with, or perform laboratory analysis upon controlled  
95 substances in Schedule I other than those specified in the license.

96 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with  
97 substances in Schedules II through V if they are authorized to administer, dispense, or conduct  
98 research under the laws of this state.

99 (ii) The division need not require a separate license for practitioners engaging in  
100 research with nonnarcotic controlled substances in Schedules II through V where the licensee is  
101 already licensed under this chapter in another capacity.

102 (iii) With respect to research involving narcotic substances in Schedules II through V,  
103 or where the division by rule requires a separate license for research of nonnarcotic substances  
104 in Schedules II through V, a practitioner shall apply to the division prior to conducting  
105 research.

106 (iv) Licensing for purposes of bona fide research with controlled substances by a  
107 practitioner considered qualified may be denied only on a ground specified in Subsection (4),  
108 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard  
109 adequately the practitioner's supply of substances against diversion from medical or scientific  
110 use.

111 (v) Practitioners registered under federal law to conduct research in Schedule I  
112 substances may conduct research in Schedule I substances within this state upon furnishing the  
113 division evidence of federal registration.

114 (d) Compliance by manufacturers, producers, and distributors with the provisions of  
115 federal law respecting registration, excluding fees, entitles them to be licensed under this  
116 chapter.

117 (e) The division shall initially license those persons who own or operate an  
118 establishment engaged in the manufacture, production, distribution, dispensation, or

119 administration of controlled substances prior to April 3, 1980, and who are licensed by the  
120 state.

121 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed  
122 on probation, or revoked by the division upon finding that the applicant or licensee has:

123 (i) materially falsified any application filed or required pursuant to this chapter;

124 (ii) been convicted of an offense under this chapter or any law of the United States, or  
125 any state, relating to any substance defined as a controlled substance;

126 (iii) been convicted of a felony under any other law of the United States or any state  
127 within five years of the date of the issuance of the license;

128 (iv) had a federal registration or license denied, suspended, or revoked by competent  
129 federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense  
130 controlled substances;

131 (v) had the licensee's license suspended or revoked by competent authority of another  
132 state for violation of laws or regulations comparable to those of this state relating to the  
133 manufacture, distribution, or dispensing of controlled substances;

134 (vi) violated any division rule that reflects adversely on the licensee's reliability and  
135 integrity with respect to controlled substances;

136 (vii) refused inspection of records required to be maintained under this chapter by a  
137 person authorized to inspect them; or

138 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the  
139 purpose of manipulating human hormonal structure so as to:

140 (A) increase muscle mass, strength, or weight without medical necessity and without a  
141 written prescription by any practitioner in the course of the practitioner's professional practice;

142 or

143 (B) improve performance in any form of human exercise, sport, or game.

144 (b) The division may limit revocation or suspension of a license to a particular  
145 controlled substance with respect to which grounds for revocation or suspension exist.

146 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to  
147 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of  
148 Occupational and Professional Licensing Act, and conducted in conjunction with the  
149 appropriate representative committee designated by the director of the department.

150 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and  
151 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,  
152 except where the division is designated by law to perform those functions, or, when not  
153 designated by law, is designated by the executive director of the Department of Commerce to  
154 conduct the proceedings.

155 (d) (i) The division may suspend any license simultaneously with the institution of  
156 proceedings under this section if it finds there is an imminent danger to the public health or  
157 safety.

158 (ii) Suspension shall continue in effect until the conclusion of proceedings, including  
159 judicial review, unless withdrawn by the division or dissolved by a court of competent  
160 jurisdiction.

161 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled  
162 substances owned or possessed by the licensee may be placed under seal in the discretion of the  
163 division.

164 (ii) Disposition may not be made of substances under seal until the time for taking an  
165 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,  
166 orders the sale of perishable substances and the proceeds deposited with the court.

167 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

168 (f) The division shall notify promptly the Drug Enforcement Administration of all  
169 orders suspending or revoking a license and all forfeitures of controlled substances.

170 (g) If an individual's Drug Enforcement Administration registration is denied, revoked,  
171 surrendered, or suspended, the division shall immediately suspend the individual's controlled  
172 substance license, which shall only be reinstated by the division upon reinstatement of the  
173 federal registration, unless the division has taken further administrative action under  
174 Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled  
175 substance license.

176 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and  
177 inventories in conformance with the record keeping and inventory requirements of federal and  
178 state law and any additional rules issued by the division.

179 (b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or  
180 other person who is authorized to administer or professionally use a controlled substance shall

181 keep a record of the drugs received by him and a record of all drugs administered, dispensed, or  
182 professionally used by him otherwise than by a prescription.

183 (ii) A person using small quantities or solutions or other preparations of those drugs for  
184 local application has complied with this Subsection (5)(b) if the person keeps a record of the  
185 quantity, character, and potency of those solutions or preparations purchased or prepared by  
186 him, and of the dates when purchased or prepared.

187 (6) Controlled substances in Schedules I through V may be distributed only by a  
188 licensee and pursuant to an order form prepared in compliance with division rules or a lawful  
189 order under the rules and regulations of the United States.

190 (7) (a) A person may not write or authorize a prescription for a controlled substance  
191 unless the person is:

192 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state  
193 or under the laws of another state having similar standards; and

194 (ii) licensed under this chapter or under the laws of another state having similar  
195 standards.

196 (b) A person other than a pharmacist licensed under the laws of this state, or the  
197 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not  
198 dispense a controlled substance.

199 (c) (i) A controlled substance may not be dispensed without the written prescription of  
200 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

201 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in  
202 conformity with Subsection (7)(d).

203 (iii) In emergency situations, as defined by division rule, controlled substances may be  
204 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms  
205 designated by the division and filed by the pharmacy.

206 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with  
207 Subsection (7)(d).

208 (d) Except for emergency situations designated by the division, a person may not issue,  
209 fill, compound, or dispense a prescription for a controlled substance unless the prescription is  
210 signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of  
211 the prescriber as authorized by division rule, and contains the following information:

- 212 (i) the name, address, and registry number of the prescriber;
- 213 (ii) the name, address, and age of the person to whom or for whom the prescription is  
214 issued;
- 215 (iii) the date of issuance of the prescription; and
- 216 (iv) the name, quantity, and specific directions for use by the ultimate user of the  
217 controlled substance.
- 218 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I  
219 controlled substance unless:
  - 220 (i) the person who writes the prescription is licensed under Subsection (2); and
  - 221 (ii) the prescribed controlled substance is to be used in research.
- 222 (f) Except when administered directly to an ultimate user by a licensed practitioner,  
223 controlled substances are subject to the ~~following~~ restrictions~~[:]~~ of this Subsection (7)(f).
  - 224 (i) ~~[(A)]~~ A prescription for a Schedule II substance may not be refilled.
  - 225 ~~[(B)]~~ (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a  
226 one-month's supply, as directed on the daily dosage rate of the prescriptions.
  - 227 (iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II  
228 or Schedule III controlled substance that is an opiate and that is issued for an acute condition  
229 shall be completely or partially filled in a quantity not to exceed a 7 day supply as directed on  
230 the daily dosage rate of the prescription.
  - 231 (B) Subsection (7)(f)(iii)(A) does not apply to a postsurgical prescription issued for  
232 surgeries when the practitioner records in the patient's medical record that the practitioner has  
233 determined that a quantity exceeding 7 days is needed, in which case the practitioner may  
234 prescribe up to a thirty day supply, with a partial fill at the discretion of the practitioner.
  - 235 (C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or  
236 chronic conditions which are documented as being complex or chronic in the medical record.
- 237 ~~[(ii)]~~ (iv) A Schedule III or IV controlled substance may be filled only within six  
238 months of issuance, and may not be refilled more than six months after the date of its original  
239 issuance or be refilled more than five times after the date of the prescription unless renewed by  
240 the practitioner.
- 241 ~~[(iii)]~~ (v) All other controlled substances in Schedule V may be refilled as the  
242 prescriber's prescription directs, but they may not be refilled one year after the date the



243 prescription was issued unless renewed by the practitioner.

244 ~~[(iv)]~~ (vi) Any prescription for a Schedule II substance may not be dispensed if it is not  
245 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days  
246 after the date the prescription was issued, or 30 days after the dispensing date, if that date is  
247 specified separately from the date of issue.

248 ~~[(v)]~~ (vii) A practitioner may issue more than one prescription at the same time for the  
249 same Schedule II controlled substance, but only under the following conditions:

250 (A) no more than three prescriptions for the same Schedule II controlled substance may  
251 be issued at the same time;

252 (B) no one prescription may exceed a 30-day supply; and

253 (C) a second or third prescription shall include the date of issuance and the date for  
254 dispensing~~[-and]~~.

255 ~~[(D) unless the practitioner determines there is a valid medical reason to the contrary,  
256 the date for dispensing a second or third prescription may not be fewer than 30 days from the  
257 dispensing date of the previous prescription.]~~

258 (g) An order for a controlled substance in Schedules II through V for use by an  
259 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this  
260 Subsection (7) if the order is:

261 (i) issued or made by a prescribing practitioner who holds an unrestricted registration  
262 with the federal Drug Enforcement Administration, and an active Utah controlled substance  
263 license in good standing issued by the division under this section, or a medical resident who is  
264 exempted from licensure under Subsection 58-1-307(1)(c);

265 (ii) authorized by the prescribing practitioner treating the patient and the prescribing  
266 practitioner designates the quantity ordered;

267 (iii) entered upon the record of the patient, the record is signed by the prescriber  
268 affirming the prescriber's authorization of the order within 48 hours after filling or  
269 administering the order, and the patient's record reflects the quantity actually administered; and

270 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within  
271 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by  
272 the hospital and the amount taken from the supply is administered directly to the patient  
273 authorized to receive it.

274 (h) A practitioner licensed under this chapter may not prescribe, administer, or  
275 dispense a controlled substance to a child, without first obtaining the consent required in  
276 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except  
277 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same  
278 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition  
279 requiring the administration of a controlled substance for immediate relief of pain or suffering.

280 (i) A practitioner licensed under this chapter may not prescribe or administer dosages  
281 of a controlled substance in excess of medically recognized quantities necessary to treat the  
282 ailment, malady, or condition of the ultimate user.

283 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense  
284 any controlled substance to another person knowing that the other person is using a false name,  
285 address, or other personal information for the purpose of securing the controlled substance.

286 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense  
287 a controlled substance may not manufacture, distribute, or dispense a controlled substance to  
288 another licensee or any other authorized person not authorized by this license.

289 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a  
290 symbol required by this chapter or by a rule issued under this chapter.

291 (m) A person licensed under this chapter may not refuse or fail to make, keep, or  
292 furnish any record notification, order form, statement, invoice, or information required under  
293 this chapter.

294 (n) A person licensed under this chapter may not refuse entry into any premises for  
295 inspection as authorized by this chapter.

296 (o) A person licensed under this chapter may not furnish false or fraudulent material  
297 information in any application, report, or other document required to be kept by this chapter or  
298 willfully make any false statement in any prescription, order, report, or record required by this  
299 chapter.

300 (8) (a) (i) Any person licensed under this chapter who is found by the division to have  
301 violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to  
302 a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of  
303 any violations in accordance with Sections 58-1-106 and 58-1-108.

304 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the

305 General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

306 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j)  
307 or Subsection (10) is:

308 (i) upon first conviction, guilty of a class B misdemeanor;

309 (ii) upon second conviction, guilty of a class A misdemeanor; and

310 (iii) on third or subsequent conviction, guilty of a third degree felony.

311 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through  
312 (o) shall upon conviction be guilty of a third degree felony.

313 (9) Any information communicated to any licensed practitioner in an attempt to  
314 unlawfully procure, or to procure the administration of, a controlled substance is not considered  
315 to be a privileged communication.

316 (10) A person holding a valid license under this chapter who is engaged in medical  
317 research may produce, possess, administer, prescribe, or dispense a controlled substance for  
318 research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense  
319 a controlled substance listed in Section 58-37-4.2.

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

321 **58-37f-301. Access to database.**

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

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

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

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

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

334 (ii) the following law enforcement officers, but the division may only provide  
335 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding

336 individuals for whom a controlled substance has been prescribed or to whom a controlled  
337 substance has been dispensed:

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

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

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

345 (c) a board member if:

346 (i) the board member is assigned to monitor a licensee on probation; and

347 (ii) the board member is limited to obtaining information from the database regarding  
348 the specific licensee on probation;

349 (d) a member of a diversion committee established in accordance with Subsection  
350 58-1-404(2) if:

351 (i) the diversion committee member is limited to obtaining information from the  
352 database regarding the person whose conduct is the subject of the committee's consideration;  
353 and

354 (ii) the conduct that is the subject of the committee's consideration includes a violation  
355 or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant  
356 violation or potential violation under this title;

357 (e) in accordance with a written agreement entered into with the department,  
358 employees of the Department of Health:

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

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

366 (iii) in the medical examiner's office;

367 (f) in accordance with a written agreement entered into with the department, a designee  
368 of the director of the Department of Health, who is not an employee of the Department of  
369 Health, whom the director of the Department of Health assigns to conduct scientific studies  
370 regarding the use or abuse of controlled substances pursuant to an application process  
371 established in rule by the Department of Health, if:

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

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

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

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

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

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

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

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

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

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

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

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

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

402 (h) a licensed practitioner having authority to prescribe controlled substances, to the  
403 extent the information:

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

406 (I) prescribing or considering prescribing any controlled substance to the current or  
407 prospective patient;

408 (II) diagnosing the current or prospective patient;

409 (III) providing medical treatment or medical advice to the current or prospective  
410 patient; or

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

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

413 or

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

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

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

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

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

426 (v) relates to the use of the controlled substance database by an employee of the  
427 practitioner, described in Subsection (2)(i); or

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

429 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a  
430 controlled substance;

431 (i) in accordance with Subsection (3)(a), an employee of a practitioner described in  
432 Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

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

435 (ii) the practitioner provides written notice to the division of the identity of the  
436 employee; and

437 (iii) the division:

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

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

441 [58-37f-203\(5\)](#) with respect to the employee;

442 (j) an employee of the same business that employs a licensed practitioner under  
443 Subsection (2)(h) if:

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

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

448 (iii) the division:

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

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

452 [58-37f-203\(5\)](#) with respect to the employee;

453 (k) a licensed pharmacist having authority to dispense a controlled substance to the  
454 extent the information is provided or sought for the purpose of:

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

456 (ii) determining whether a person:

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

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

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

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

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

467 (iii) the division:

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

469 (B) provides the employee with a password that is unique to that employee to access  
470 the database in order to permit the division to comply with the requirements of Subsection  
471 58-37f-203(5) with respect to the employee;

472 (m) pursuant to a valid search warrant, federal, state, and local law enforcement  
473 officers and state and local prosecutors who are engaged in an investigation related to:

474 (i) one or more controlled substances; and

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

476 (n) subject to Subsection (7), a probation or parole officer, employed by the  
477 Department of Corrections or by a political subdivision, to gain access to database information  
478 necessary for the officer's supervision of a specific probationer or parolee who is under the  
479 officer's direct supervision;

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

483 (p) a mental health therapist, if:

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

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

486 (B) receiving treatment from, or under the direction of, the mental health therapist as  
487 part of the patient's participation in the licensed substance abuse treatment program described  
488 in Subsection (2)(p)(i)(A);

489 (ii) the information is sought for the purpose of determining whether the patient is  
490 using a controlled substance while the patient is enrolled in the licensed substance abuse



491 treatment program described in Subsection (2)(p)(i)(A); and

492 (iii) the licensed substance abuse treatment program described in Subsection

493 (2)(p)(i)(A) is associated with a practitioner who:

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

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

498 (q) an individual who is the recipient of a controlled substance prescription entered into  
499 the database, upon providing evidence satisfactory to the division that the individual requesting  
500 the information is in fact the individual about whom the data entry was made;

501 (r) an individual under Subsection (2)(q) for the purpose of obtaining a list of the  
502 persons and entities that have requested or received any information from the database  
503 regarding the individual, except if the individual's record is subject to a pending or current  
504 investigation as authorized under this Subsection (2);

505 (s) the inspector general, or a designee of the inspector general, of the Office of  
506 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in  
507 Title 63A, Chapter 13, Part 2, Office and Powers; and

508 (t) the following licensed physicians for the purpose of reviewing and offering an  
509 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter  
510 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

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

515 (3) (a) (i) A practitioner described in Subsection (2)(h) may designate [~~up to three~~] one  
516 or more employees to access information from the database under Subsection (2)(i), (2)(j), or  
517 (4)(c).

518 (ii) A pharmacist described in Subsection (2)(k) who is a pharmacist-in-charge may  
519 designate up to five employees to access information from the database under Subsection (2)(l).

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

522 (i) establish background check procedures to determine whether an employee  
523 designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database;  
524 and

525 (ii) establish the information to be provided by an emergency [room] department  
526 employee under Subsection (4); and

527 (iii) facilitate providing controlled substance prescription information to a third party  
528 under Subsection (5).

529 (c) The division shall grant an employee designated under Subsection (2)(i), (2)(j), or  
530 (4)(c) access to the database, unless the division determines, based on a background check, that  
531 the employee poses a security risk to the information contained in the database.

532 (4) (a) An individual who is employed in the emergency [room] department of a  
533 hospital may exercise access to the database under this Subsection (4) on behalf of a licensed  
534 practitioner if the individual is designated under Subsection (4)(c) and the licensed practitioner:

535 (i) is employed in the emergency [room] department;

536 (ii) is treating an emergency [room] department patient for an emergency medical  
537 condition; and

538 (iii) requests that an individual employed in the emergency [room] department and  
539 designated under Subsection (4)(c) obtain information regarding the patient from the database  
540 as needed in the course of treatment.

541 (b) The emergency [room] department employee obtaining information from the  
542 database shall, when gaining access to the database, provide to the database the name and any  
543 additional identifiers regarding the requesting practitioner as required by division  
544 administrative rule established under Subsection (3)(b).

545 (c) An individual employed in the emergency [room] department under this Subsection  
546 (4) may obtain information from the database as provided in Subsection (4)(a) if:

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

549 (ii) the practitioner and the hospital operating the emergency [room] department  
550 provide written notice to the division of the identity of the designated employee; and

551 (iii) the division:

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

553 (B) provides the employee with a password that is unique to that employee to access  
554 the database in order to permit the division to comply with the requirements of Subsection  
555 58-37f-203(5) with respect to the employee.

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

560 (5) (a) (i) An individual may request that the division provide the information under  
561 Subsection (5)(b) to a third party who is designated by the individual each time a controlled  
562 substance prescription for the individual is dispensed.

563 (ii) The division shall upon receipt of the request under this Subsection (5)(a) advise  
564 the individual in writing that the individual may direct the division to discontinue providing the  
565 information to a third party and that notice of the individual's direction to discontinue will be  
566 provided to the third party.

567 (b) The information the division shall provide under Subsection (5)(a) is:

568 (i) the fact a controlled substance has been dispensed to the individual, but without  
569 identifying the controlled substance; and

570 (ii) the date the controlled substance was dispensed.

571 (c) (i) An individual who has made a request under Subsection (5)(a) may direct that  
572 the division discontinue providing information to the third party.

573 (ii) The division shall:

574 (A) notify the third party that the individual has directed the division to no longer  
575 provide information to the third party; and

576 (B) discontinue providing information to the third party.

577 (6) (a) An individual who is granted access to the database based on the fact that the  
578 individual is a licensed practitioner or a mental health therapist shall be denied access to the  
579 database when the individual is no longer licensed.

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

583 (7) A probation or parole officer is not required to obtain a search warrant to access the

584 database in accordance with Subsection (2)(n).

585 (8) The division shall review and adjust the database programing which automatically  
586 logs off an individual who is granted access to the database under Subsections (2)(h), (2)(i),  
587 (2)(j), and (4)(c) to maximize the following objectives:

588 (a) to protect patient privacy;

589 (b) to reduce inappropriate access; and

590 (c) to make the database more useful and helpful to a person accessing the database  
591 under Subsections (2)(h), (2)(i), (2)(j), and (4)(c), especially in high usage locations such as an  
592 emergency department.

593 Section 3. Section **58-37f-304** is amended to read:

594 **58-37f-304. Database utilization.**

595 (1) As used in this section:

596 (a) "Dispenser" means a licensed pharmacist, as described in Section **58-17b-303**, or  
597 the pharmacist's licensed intern, as described in Section **58-17b-304**, who is also licensed to  
598 dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

599 ~~[(b) "Opioid" means those substances listed in Subsection **58-37-4(2)(b)(i)** or~~  
600 ~~(2)(b)(ii).]~~

601 ~~[(c)]~~ (b) "Outpatient" means a setting in which an individual visits a licensed  
602 healthcare facility or a healthcare provider's office for a diagnosis or treatment but is not  
603 admitted to a licensed healthcare facility for an overnight stay.

604 ~~[(d)]~~ (c) "Prescriber" means an individual authorized to prescribe a controlled  
605 substance under Title 58, Chapter 37, Utah Controlled Substances Act.

606 ~~[(2) To address the serious public health concern of life-altering and life-threatening~~  
607 ~~opioid abuse and overdose, and to achieve the purposes of this chapter and as described in~~  
608 ~~Section **58-37f-201**, which includes identifying and reducing the prescribing and dispensing of~~  
609 ~~opioids in an unprofessional or unlawful manner or in quantities or frequencies inconsistent~~  
610 ~~with generally recognized standards of dosage for an opioid, through utilization of the carefully~~  
611 ~~developed and highly respected database:]~~

612 ~~[(a) a prescriber or dispenser of an opioid for individual outpatient usage shall access~~  
613 ~~and review the database as necessary in the prescriber's or dispenser's professional judgment~~  
614 ~~and to achieve the purpose of this chapter as described in Section **58-37f-201**; (b) a]~~

615 (d) "Schedule II opioid" means those substances listed in Subsection 58-37-4(2)(b)(i)  
616 or (2)(b)(ii).

617 (e) "Schedule III opioid" means those substances listed in Subsection 58-37-4(2)(c)  
618 that are opioids.

619 (2) (a) A prescriber shall substantially comply with this Subsection (2).

620 (b) Except as provided in Subsection (2)(b), a prescriber shall check the database for  
621 information about a patient before the first time the prescriber gives a prescription to a patient  
622 for a Schedule II opioid or a Schedule III opioid.

623 (c) A prescriber is not required to check the database under Subsection (2)(b) if:

624 (i) the prescription for a Schedule II opioid or a Schedule III opioid is for three days or  
625 fewer on the daily dosage instructions on the prescription; or

626 (ii) the prescriber has prior knowledge of the patient's prescription history based on the  
627 prescriber's review of the patient's health record.

628 (d) If a prescriber is repeatedly prescribing a Schedule II opioid or Schedule III opioid  
629 to a patient, the prescriber shall periodically review information about the patient in:

630 (i) the database, or

631 (ii) other similar records of controlled substances the patient has filled.

632 (e) A prescriber may assign the access and review required under [Subsection (2)(a) to  
633 an employee, in accordance with Subsections 58-37f-301(2)(g) and (h)] Subsections (2)(b) and  
634 (2)(c) to one or more employees in accordance with Subsections 58-37f-301(2)(i) and (j).

635 (f) The division shall not take action against the license of a prescriber for failure to  
636 follow this Subsection (2) if the prescriber demonstrates substantial compliance with the  
637 requirements of this Subsection (2).

638 (3) The division shall, in collaboration with the licensing boards for prescribers and  
639 dispensers:

640 (a) develop a system that gathers and reports to prescribers and dispensers the progress  
641 and results of the prescriber's and dispenser's individual access and review of the database, as  
642 provided in this section; and

643 (b) reduce or waive the division's continuing education requirements regarding opioid  
644 prescriptions, described in Section 58-37-6.5, including the online tutorial and test relating to  
645 the database, for prescribers and dispensers whose individual utilization of the database

646 [~~contribute to the life-saving and public safety purposes of this section and as described in~~  
647 ~~Subsection (2)~~], as determined by the division, demonstrates substantial compliance with this  
648 section.

649 (4) If the dispenser's access and review of the database suggest that the individual  
650 seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with  
651 generally recognized standards as provided in this section and Section 58-37f-201, the  
652 dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed,  
653 current, and professional decision regarding whether the prescribed opioid is medically  
654 justified, notwithstanding the results of the database search.