

**CONTROLLED SUBSTANCE AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Controlled Substances Act.

**Highlighted Provisions:**

This bill:

- ▶ removes an exception to the 7-day limit on prescriptions for certain controlled substances after a surgery.

**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 2020, Chapter 81

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

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

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

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

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

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled

33 substance in Schedules I through V within this state, or who proposes to engage in  
34 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting  
35 research with, or performing laboratory analysis upon controlled substances included in  
36 Schedules I through V within this state shall obtain a license issued by the division.

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

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

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

47 (i) an agent or employee, except a sales representative, of any registered manufacturer,  
48 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the  
49 usual course of the agent or employee's business or employment; however, nothing in this  
50 subsection shall be interpreted to permit an agent, employee, sales representative, or detail man  
51 to maintain an inventory of controlled substances separate from the location of the person's  
52 employer's registered and licensed place of business;

53 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or  
54 warehouseman, who possesses a controlled substance in the usual course of the person's  
55 business or employment; and

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

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

62 (e) A separate license is required at each principal place of business or professional  
63 practice where the applicant manufactures, produces, distributes, dispenses, conducts research

64 with, or performs laboratory analysis upon controlled substances.

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

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

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

73 (iii) In determining public interest under this Subsection (3)(a), the division shall  
74 consider whether the applicant has:

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

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

79 (C) been convicted under federal or state laws relating to the manufacture, distribution,  
80 or dispensing of substances;

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

82 (E) established effective controls against diversion; and

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

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

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

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

94 (iii) With respect to research involving narcotic substances in Schedules II through V,

95 or where the division by rule requires a separate license for research of nonnarcotic substances  
96 in Schedules II through V, a practitioner shall apply to the division prior to conducting  
97 research.

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

103 (v) Practitioners registered under federal law to conduct research in Schedule I  
104 substances may conduct research in Schedule I substances within this state upon providing the  
105 division with evidence of federal registration.

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

109 (e) The division shall initially license those persons who own or operate an  
110 establishment engaged in the manufacture, production, distribution, dispensation, or  
111 administration of controlled substances prior to April 3, 1980, and who are licensed by the  
112 state.

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

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

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

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

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

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

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

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

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

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

134 or

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

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

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

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

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

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

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

156 (ii) Disposition may not be made of substances under seal until the time for taking an

157 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,  
158 orders the sale of perishable substances and the proceeds deposited with the court.

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

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

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

168 (5) (a) A person licensed under Subsection (2) or (3) shall maintain records and  
169 inventories in conformance with the record keeping and inventory requirements of federal and  
170 state law and any additional rules issued by the division.

171 (b) (i) A physician, dentist, naturopathic physician, veterinarian, practitioner, or other  
172 individual who is authorized to administer or professionally use a controlled substance shall  
173 keep a record of the drugs received by the individual and a record of all drugs administered,  
174 dispensed, or professionally used by the individual otherwise than by a prescription.

175 (ii) An individual using small quantities or solutions or other preparations of those  
176 drugs for local application has complied with this Subsection (5)(b) if the individual keeps a  
177 record of the quantity, character, and potency of those solutions or preparations purchased or  
178 prepared by the individual, and of the dates when purchased or prepared.

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

182 (7) (a) An individual may not write or authorize a prescription for a controlled  
183 substance unless the individual is:

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

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

188 (b) An individual other than a pharmacist licensed under the laws of this state, or the  
189 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not  
190 dispense a controlled substance.

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

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

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

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

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

205 (i) the name, address, and registry number of the prescriber;

206 (ii) the name, address, and age of the person to whom or for whom the prescription is  
207 issued;

208 (iii) the date of issuance of the prescription; and

209 (iv) the name, quantity, and specific directions for use by the ultimate user of the  
210 controlled substance.

211 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I  
212 controlled substance unless:

213 (i) the individual who writes the prescription is licensed under Subsection (2); and

214 (ii) the prescribed controlled substance is to be used in research.

215 (f) Except when administered directly to an ultimate user by a licensed practitioner,  
216 controlled substances are subject to the restrictions of this Subsection (7)(f).

217 (i) A prescription for a Schedule II substance may not be refilled.

218 (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a

219 one-month's supply, as directed on the daily dosage rate of the prescriptions.

220 (iii) (A) [~~Except as provided in Subsection (7)(f)(iii)(B), a~~] A prescription for a  
221 Schedule II or Schedule III controlled substance that is an opiate and that is issued for an acute  
222 condition shall be completely or partially filled in a quantity not to exceed a seven-day supply  
223 as directed on the daily dosage rate of the prescription.

224 [~~(B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when~~  
225 ~~the practitioner determined that a quantity exceeding seven days is needed, in which case the~~  
226 ~~practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the~~  
227 ~~practitioner.~~]

228 [(~~C~~)] (B) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or  
229 chronic conditions which are documented as being complex or chronic in the medical record.

230 [(~~D~~)] (C) A pharmacist is not required to verify that a prescription is in compliance  
231 with Subsection (7)(f)(iii).

232 (iv) A Schedule III or IV controlled substance may be filled only within six months of  
233 issuance, and may not be refilled more than six months after the date of its original issuance or  
234 be refilled more than five times after the date of the prescription unless renewed by the  
235 practitioner.

236 (v) All other controlled substances in Schedule V may be refilled as the prescriber's  
237 prescription directs, but they may not be refilled one year after the date the prescription was  
238 issued unless renewed by the practitioner.

239 (vi) Any prescription for a Schedule II substance may not be dispensed if it is not  
240 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days  
241 after the date the prescription was issued, or 30 days after the dispensing date, if that date is  
242 specified separately from the date of issue.

243 (vii) A practitioner may issue more than one prescription at the same time for the same  
244 Schedule II controlled substance, but only under the following conditions:

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

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

248 (C) a second or third prescription shall include the date of issuance and the date for  
249 dispensing.



250 (g) (i) Beginning January 1, 2022, each prescription issued for a controlled substance  
251 shall be transmitted electronically as an electronic prescription unless the prescription is:

252 (A) for a patient residing in an assisted living facility as that term is defined in Section  
253 26-21-2, a long-term care facility as that term is defined in Section 58-31b-102, or a  
254 correctional facility as that term is defined in Section 64-13-1;

255 (B) issued by a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice  
256 Act;

257 (C) dispensed by a Department of Veterans Affairs pharmacy;

258 (D) issued during a temporary technical or electronic failure at the practitioner's or  
259 pharmacy's location; or

260 (E) issued in an emergency situation.

261 (ii) The division, in collaboration with the appropriate boards that govern the licensure  
262 of the licensees who are authorized by the division to prescribe or to dispense controlled  
263 substances, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
264 Rulemaking Act to:

265 (A) require that controlled substances prescribed or dispensed under Subsection  
266 (7)(g)(i)(D) indicate on the prescription that the prescribing practitioner or the ~~[pharmacy]~~  
267 pharmacy is experiencing a technical difficulty or an electronic failure;

268 (B) define an emergency situation for purposes of Subsection (7)(g)(i)(E);

269 (C) establish additional exemptions to the electronic prescription requirements  
270 established in this Subsection (7)(g);

271 (D) establish guidelines under which a prescribing practitioner or a pharmacy may  
272 obtain an extension of up to two additional years to comply with Subsection (7)(g)(i);

273 (E) establish a protocol to follow if the pharmacy that receives the electronic  
274 prescription is not able to fill the prescription; and

275 (F) establish requirements that comply with federal laws and regulations for software  
276 used to issue and dispense electronic prescriptions.

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

280 (i) issued or made by a prescribing practitioner who holds an unrestricted registration

281 with the federal Drug Enforcement Administration, and an active Utah controlled substance  
282 license in good standing issued by the division under this section, or a medical resident who is  
283 exempted from licensure under Subsection 58-1-307(1)(c);

284 (ii) authorized by the prescribing practitioner treating the patient and the prescribing  
285 practitioner designates the quantity ordered;

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

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

293 (i) A practitioner licensed under this chapter may not prescribe, administer, or dispense  
294 a controlled substance to a child, without first obtaining the consent required in Section  
295 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases  
296 of an emergency. For purposes of Subsection (7)(i), "child" has the same meaning as defined  
297 in Section 78A-6-105, and "emergency" means any physical condition requiring the  
298 administration of a controlled substance for immediate relief of pain or suffering.

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

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

306 (l) A person who is licensed under this chapter to manufacture, distribute, or dispense a  
307 controlled substance may not manufacture, distribute, or dispense a controlled substance to  
308 another licensee or any other authorized person not authorized by this license.

309 (m) A person licensed under this chapter may not omit, remove, alter, or obliterate a  
310 symbol required by this chapter or by a rule issued under this chapter.

311 (n) A person licensed under this chapter may not refuse or fail to make, keep, or

312 furnish any record notification, order form, statement, invoice, or information required under  
313 this chapter.

314 (o) A person licensed under this chapter may not refuse entry into any premises for  
315 inspection as authorized by this chapter.

316 (p) A person licensed under this chapter may not furnish false or fraudulent material  
317 information in any application, report, or other document required to be kept by this chapter or  
318 willfully make any false statement in any prescription, order, report, or record required by this  
319 chapter.

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

324 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) ~~[it]~~ into  
325 the General Fund as a dedicated credit to be used by the division under Subsection  
326 58-37f-502(1).

327 (iii) The director may collect a penalty that is not paid by:

328 (A) referring the matter to a collection agency; or

329 (B) bringing an action in the district court of the county where the person against  
330 whom the penalty is imposed resides or in the county where the office of the director is located.

331 (iv) A county attorney or the attorney general of the state shall provide legal assistance  
332 and advice to the director in an action to collect a penalty.

333 (v) A court shall award reasonable attorney fees and costs to the prevailing party in an  
334 action brought by the division to collect a penalty.

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

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

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

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

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

342 (9) Any information communicated to any licensed practitioner in an attempt to

343 unlawfully procure, or to procure the administration of, a controlled substance is not considered  
344 to be a privileged communication.

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