

1 **CONTROLLED SUBSTANCE DATABASE**

2 **AMENDMENTS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ronda Rudd Menlove**

6 Senate Sponsor: Peter C. Knudson

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Utah Controlled Substances Act.

11 **Highlighted Provisions:**

12 This bill:

13 ▸ provides limited access to the Controlled Substance Database for:

14 • practitioners, for the purpose of inquiring whether the practitioner's DEA
15 number has been fraudulently used by another person; and

16 • law enforcement authorities investigating insurance, Medicaid, or Medicare
17 fraud.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **58-37-7.5**, as last amended by Chapter 46, Laws of Utah 2006

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

27 Section 1. Section **58-37-7.5** is amended to read:

28 **58-37-7.5. Controlled substance database -- Pharmacy reporting requirements --**
29 **Access -- Penalties.**

30 (1) As used in this section:

31 (a) "Database" means the controlled substance database created in this section.

32 (b) "Database manager" means the person responsible for operating the database, or his
33 designee.

34 (c) "Division" means the Division of Occupational and Professional Licensing created
35 in Section 58-1-103.

36 (d) "Health care facility" has the same definition as in Section 26-21-2.

37 (e) "Pharmacy or pharmaceutical facility" has the same definition as in Section
38 58-17b-102.

39 (2) (a) There is created within the division a controlled substance database.

40 (b) The division shall administer and direct the functioning of the database in
41 accordance with this section. The division may under state procurement laws contract with
42 another state agency or private entity to establish, operate, or maintain the database. The
43 division in collaboration with the board shall determine whether to operate the database within
44 the division or contract with another entity to operate the database, based on an analysis of
45 costs and benefits.

46 (c) The purpose of the database is to contain data as described in this section regarding
47 every prescription for a controlled substance dispensed in the state to any person other than an
48 inpatient in a licensed health care facility.

49 (d) Data required by this section shall be submitted in compliance with this section to
50 the manager of the database by the pharmacist in charge of the drug outlet where the controlled
51 substance is dispensed.

52 (3) The Utah State Board of Pharmacy created in Section 58-17b-201 shall advise the
53 division regarding:

54 (a) establishing, maintaining, and operating the database;

55 (b) access to the database and how access is obtained; and

56 (c) control of information contained in the database.

57 (4) The pharmacist in charge shall, regarding each controlled substance dispensed by a

58 pharmacist under his supervision other than those dispensed for an inpatient at a health care
59 facility, submit to the manager of the database the following information, by a procedure and in
60 a format established by the division:

- 61 (a) name of the prescribing practitioner;
- 62 (b) date of the prescription;
- 63 (c) date the prescription was filled;
- 64 (d) name of the person for whom the prescription was written;
- 65 (e) positive identification of the person receiving the prescription, including the type of
66 identification and any identifying numbers on the identification;
- 67 (f) name of the controlled substance;
- 68 (g) quantity of controlled substance prescribed;
- 69 (h) strength of controlled substance;
- 70 (i) quantity of controlled substance dispensed;
- 71 (j) dosage quantity and frequency as prescribed;
- 72 (k) name of drug outlet dispensing the controlled substance;
- 73 (l) name of pharmacist dispensing the controlled substance; and
- 74 (m) other relevant information as required by division rule.

75 (5) The division shall maintain the database in an electronic file or by other means
76 established by the division to facilitate use of the database for identification of:

- 77 (a) prescribing practices and patterns of prescribing and dispensing controlled
78 substances;
- 79 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
80 manner;
- 81 (c) individuals receiving prescriptions for controlled substances from licensed
82 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
83 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
84 that controlled substance; and
- 85 (d) individuals presenting forged or otherwise false or altered prescriptions for

86 controlled substances to a pharmacy.

87 (6) (a) The division shall by rule establish the electronic format in which the
88 information required under this section shall be submitted to the administrator of the database.

89 (b) The division shall ensure the database system records and maintains for reference:

90 (i) identification of each person who requests or receives information from the
91 database;

92 (ii) the information provided to each person; and

93 (iii) the date and time the information is requested or provided.

94 (7) The division shall make rules to:

95 (a) effectively enforce the limitations on access to the database as described in
96 Subsection (8); and

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

99 (8) The manager of the database shall make information in the database available only
100 to the following persons, and in accordance with the limitations stated and division rules:

101 (a) personnel of the division specifically assigned to conduct investigations related to
102 controlled substances laws under the jurisdiction of the division;

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

106 (c) employees of the Department of Health whom the director of the Department of
107 Health assigns to conduct scientific studies regarding the use or abuse of controlled substances,
108 provided that the identity of the individuals and pharmacies in the database are confidential and
109 are not disclosed in any manner to any individual who is not directly involved in the scientific
110 studies;

111 (d) a licensed practitioner having authority to prescribe controlled substances, to the
112 extent;

113 (i) the information relates specifically to a current patient of the practitioner, to whom

114 the practitioner is prescribing or considering prescribing any controlled substance;

115 (ii) the information relates specifically to an individual who has access to the
116 practitioner's Drug Enforcement Administration number, and the practitioner suspects that the
117 individual may have used the practitioner's Drug Enforcement Administration identification
118 number to fraudulently acquire or prescribe controlled substances; or

119 (iii) the information relates to the practitioner's own prescribing practices, except when
120 specifically prohibited by the division by administrative rule;

121 (e) a licensed pharmacist having authority to dispense controlled substances to the
122 extent the information relates specifically to a current patient to whom that pharmacist is
123 dispensing or considering dispensing any controlled substance;

124 (f) federal, state, and local law enforcement authorities engaged as a specified duty of
125 their employment in enforcing laws;

126 (i) regulating controlled substances; [~~and~~] or

127 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; and

128 (g) an individual who is the recipient of a controlled substance prescription entered into
129 the database, upon providing evidence satisfactory to the database manager that the individual
130 requesting the information is in fact the person about whom the data entry was made.

131 (9) Any person who knowingly and intentionally releases any information in the
132 database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

133 (10) Any person who obtains or attempts to obtain information from the database by
134 misrepresentation or fraud is guilty of a third degree felony.

135 (11) (a) A person may not knowingly and intentionally use, release, publish, or
136 otherwise make available to any other person or entity any information obtained from the
137 database for any purpose other than those specified in Subsection (8). Each separate violation
138 of this Subsection (11) is a third degree felony and is also subject to a civil penalty not to
139 exceed \$5,000.

140 (b) The procedure for determining a civil violation of this Subsection (11) shall be in
141 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

142 (c) Civil penalties assessed under this Subsection (11) shall be deposited in the General
143 Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

144 (12) (a) The failure of a pharmacist in charge to submit information to the database as
145 required under this section after the division has submitted a specific written request for the
146 information or when the division determines the individual has a demonstrable pattern of
147 failing to submit the information as required is grounds for the division to take the following
148 actions in accordance with Section 58-1-401:

- 149 (i) refuse to issue a license to the individual;
- 150 (ii) refuse to renew the individual's license;
- 151 (iii) revoke, suspend, restrict, or place on probation the license;
- 152 (iv) issue a public or private reprimand to the individual;
- 153 (v) issue a cease and desist order; and
- 154 (vi) impose a civil penalty of not more than \$1,000 for each dispensed prescription
155 regarding which the required information is not submitted.

156 (b) Civil penalties assessed under Subsection (12)(a)(vi) shall be deposited in the
157 General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

158 (c) The procedure for determining a civil violation of this Subsection (12) shall be in
159 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

160 (13) An individual who has submitted information to the database in accordance with
161 this section may not be held civilly liable for having submitted the information.

162 (14) All department and the division costs necessary to establish and operate the
163 database shall be funded by appropriations from:

- 164 (a) the Commerce Service Fund; and
- 165 (b) the General Fund.

166 (15) All costs associated with recording and submitting data as required in this section
167 shall be assumed by the submitting pharmacy.