

1                                   **CONTROLLED SUBSTANCE DATABASE**

2                                   **AMENDMENTS**

3                                   2009 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Bradley M. Daw**

6                                   Senate Sponsor: Curtis S. Bramble

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7  
8   **LONG TITLE**

9   **General Description:**

10           This bill amends provisions of the Utah Controlled Substances Act relating to the  
11 controlled substance database.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ defines terms;
- 15           ▶ expands the purposes for which a practitioner or pharmacist may access information  
16 on the controlled substance database;
- 17           ▶ grants access to the controlled substance database to a mental health therapist under  
18 certain circumstances;
- 19           ▶ permits a practitioner to designate up to three employees, subject to approval by the  
20 Division of Occupational and Professional Licensing, who can access the controlled  
21 substance database on the practitioner's behalf;
- 22           ▶ provides that a practitioner, or an employee of the practitioner, who obtains  
23 information from the controlled substance database may include the information in  
24 the patient's medical chart or file and may provide the information to others in  
25 accordance with the requirements of the Health Insurance Portability and  
26 Accountability Act of 1996;
- 27           ▶ grants rulemaking authority to the Division of Occupational and Professional



28 Licensing;

29 ▶ permits the Division of Occupational and Professional Licensing to impose a fee on  
30 practitioners who designate an employee to access the controlled substance  
31 database, in order to recover the cost of determining whether the employee is a  
32 security risk;

33 ▶ provides that a person who is a licensed practitioner or a mental health therapist  
34 shall be denied access to the database when the person is no longer licensed;

35 ▶ provides that a person who is a relative of a deceased individual is not entitled to  
36 access information from the database relating to the deceased individual based on  
37 the fact or claim that the person is related to, or subrogated to the rights of, the  
38 deceased individual; and

39 ▶ makes technical changes.

40 **Monies Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 None

44 **Utah Code Sections Affected:**

45 AMENDS:

46 **58-37-7.5**, as last amended by Laws of Utah 2008, Chapter 313



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

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

50 **58-37-7.5. Controlled substance database -- Pharmacy reporting requirements --**

51 **Access -- Penalties.**

52 (1) As used in this section:

53 (a) "Board" means the Utah State Board of Pharmacy created in Section 58-17b-201.

54 (b) "Database" means the controlled substance database created in this section.

55 (c) "Database manager" means the person responsible for operating the database, or the  
56 person's designee.

57 (d) "Division" means the Division of Occupational and Professional Licensing created  
58 in Section 58-1-103.

- 59 (e) "Health care facility" is as defined in Section 26-21-2.
- 60 (f) "Mental health therapist" is as defined in Section 58-60-102.
- 61 [~~f~~] (g) "Pharmacy" or "pharmaceutical facility" is as defined in Section 58-17b-102.
- 62 (h) "Prospective patient" means a person who:
- 63 (i) is seeking medical advice, medical treatment, or medical services from a
- 64 practitioner; and
- 65 (ii) the practitioner described in Subsection (1)(h)(i) is considering accepting as a
- 66 patient.
- 67 (i) "Substance abuse treatment program" is as defined in Section 62A-2-101.
- 68 (2) (a) There is created within the division a controlled substance database.
- 69 (b) The division shall administer and direct the functioning of the database in
- 70 accordance with this section. The division may under state procurement laws contract with
- 71 another state agency or private entity to establish, operate, or maintain the database. The
- 72 division in collaboration with the board shall determine whether to operate the database within
- 73 the division or contract with another entity to operate the database, based on an analysis of
- 74 costs and benefits.
- 75 (c) The purpose of the database is to contain data as described in this section regarding
- 76 every prescription for a controlled substance dispensed in the state to any person other than an
- 77 inpatient in a licensed health care facility.
- 78 (d) Data required by this section shall be submitted in compliance with this section to
- 79 the manager of the database by the pharmacist in charge of the drug outlet where the controlled
- 80 substance is dispensed.
- 81 (3) The board shall advise the division regarding:
- 82 (a) establishing, maintaining, and operating the database;
- 83 (b) access to the database and how access is obtained; and
- 84 (c) control of information contained in the database.
- 85 (4) The pharmacist in charge shall, regarding each controlled substance dispensed by a
- 86 pharmacist under the pharmacist's supervision other than those dispensed for an inpatient at a
- 87 health care facility, submit to the manager of the database the following information, by a
- 88 procedure and in a format established by the division:
- 89 (a) name of the prescribing practitioner;

- 90 (b) date of the prescription;
- 91 (c) date the prescription was filled;
- 92 (d) name of the person for whom the prescription was written;
- 93 (e) positive identification of the person receiving the prescription, including the type of
- 94 identification and any identifying numbers on the identification;
- 95 (f) name of the controlled substance;
- 96 (g) quantity of controlled substance prescribed;
- 97 (h) strength of controlled substance;
- 98 (i) quantity of controlled substance dispensed;
- 99 (j) dosage quantity and frequency as prescribed;
- 100 (k) name of drug outlet dispensing the controlled substance;
- 101 (l) name of pharmacist dispensing the controlled substance; and
- 102 (m) other relevant information as required by division rule.
- 103 (5) The division shall maintain the database in an electronic file or by other means
- 104 established by the division to facilitate use of the database for identification of:
- 105 (a) prescribing practices and patterns of prescribing and dispensing controlled
- 106 substances;
- 107 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
- 108 manner;
- 109 (c) individuals receiving prescriptions for controlled substances from licensed
- 110 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
- 111 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
- 112 that controlled substance; and
- 113 (d) individuals presenting forged or otherwise false or altered prescriptions for
- 114 controlled substances to a pharmacy.
- 115 (6) (a) The division shall by rule establish the electronic format in which the
- 116 information required under this section shall be submitted to the administrator of the database.
- 117 (b) The division shall ensure the database system records and maintains for reference:
- 118 (i) identification of each person who requests or receives information from the
- 119 database;
- 120 (ii) the information provided to each person; and

- 121 (iii) the date and time the information is requested or provided.
- 122 (7) The division shall make rules to:
- 123 (a) effectively enforce the limitations on access to the database as described in
- 124 Subsection (8); and
- 125 (b) establish standards and procedures to ensure accurate identification of individuals
- 126 requesting information or receiving information without request from the database.
- 127 (8) The manager of the database shall make information in the database available only
- 128 to the following persons, ~~[and]~~ in accordance with the ~~[limitations stated]~~ requirements of this
- 129 section and division rules:
- 130 (a) personnel of the division specifically assigned to conduct investigations related to
- 131 controlled substances laws under the jurisdiction of the division;
- 132 (b) authorized division personnel engaged in analysis of controlled substance
- 133 prescription information as a part of the assigned duties and responsibilities of their
- 134 employment;
- 135 (c) employees of the Department of Health whom the director of the Department of
- 136 Health assigns to conduct scientific studies regarding the use or abuse of controlled substances,
- 137 provided that the identity of the individuals and pharmacies in the database are confidential and
- 138 are not disclosed in any manner to any individual who is not directly involved in the scientific
- 139 studies;
- 140 (d) a licensed practitioner having authority to prescribe controlled substances, to the
- 141 extent the information:
- 142 (i) ~~(A) [the information]~~ relates specifically to a current or prospective patient of the
- 143 practitioner~~[-, to whom the practitioner is]; and~~
- 144 (B) is sought by the practitioner for the purpose of:
- 145 (I) prescribing or considering prescribing any controlled substance[;] to the current or
- 146 prospective patient;
- 147 (II) diagnosing the current or prospective patient;
- 148 (III) providing medical treatment or medical advice to the current or prospective
- 149 patient; or
- 150 (IV) determining whether the current or prospective patient:
- 151 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

152 or

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

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

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

159 ~~[(ii) the information]~~ (iii) relates specifically to an individual who has access to the  
 160 practitioner's Drug Enforcement Administration number, and the practitioner suspects that the  
 161 individual may have used the practitioner's Drug Enforcement Administration identification  
 162 number to fraudulently acquire or prescribe a controlled ~~substances; or~~ substance;

163 ~~[(iii) the information]~~ (iv) relates to the practitioner's own prescribing practices, except  
 164 when specifically prohibited by the division by administrative rule;

165 (v) relates to the use of the controlled substance database by an employee of the  
 166 practitioner, described in Subsection (8)(e); or

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

170 (e) in accordance with Subsection (17), an employee of a practitioner described in  
 171 Subsection (8)(d), for a purpose described in Subsection (8)(d)(i) or (ii), if:

172 (i) the employee is designated by the practitioner as a person authorized to access the  
 173 information on behalf of the practitioner;

174 (ii) the practitioner provides written notice to the division of the identity of the  
 175 employee; and

176 (iii) the division:

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

178 (B) provides the employee with a ~~H~~→ [unique] ←~~H~~ password ~~H~~→ that is unique to that  
 178a employee ←~~H~~ to access the database in order to

179 permit the division to comply with the requirements of Subsection (6)(b) with respect to the  
 180 employee;

181 ~~[(e)]~~ (f) a licensed pharmacist having authority to dispense controlled substances to the  
 182 extent the information [relates specifically to a current patient to whom that pharmacist is] is

183 sought for the purpose of:

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

185 (ii) determining whether a person:

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

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

188 substance from the pharmacist;

189 ~~[(f)]~~ (g) federal, state, and local law enforcement authorities, and state and local  
190 prosecutors, engaged as a specified duty of their employment in enforcing laws:

191 (i) regulating controlled substances; or

192 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; ~~[and]~~

193 (h) a mental health therapist, if:

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

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

196 (B) receiving treatment from, or under the direction of, the mental health therapist as

197 part of the patient's participation in the licensed substance abuse treatment program described

198 in Subsection (8)(h)(i)(A);

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

201 treatment program described in Subsection (8)(h)(i)(A); and

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

203 (8)(h)(i)(A) is associated with a practitioner who:

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

206 (B) is available to consult with the mental health therapist regarding the information  
207 obtained by the mental health therapist, under this Subsection (8)(h), from the database; and

208 ~~[(g)]~~ (i) an individual who is the recipient of a controlled substance prescription  
209 entered into the database, upon providing evidence satisfactory to the database manager that the  
210 individual requesting the information is in fact the person about whom the data entry was  
211 made.

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

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

216 (b) Any person who obtains or attempts to obtain information from the database for a  
217 purpose other than a purpose authorized by this section or by rule is guilty of a third degree  
218 felony.

219 (11) (a) [~~A~~] Except as provided in Subsection (11)(d), a person may not knowingly and  
220 intentionally use, release, publish, or otherwise make available to any other person or entity any  
221 information obtained from the database for any purpose other than those specified in  
222 Subsection (8). Each separate violation of this Subsection (11) is a third degree felony and is  
223 also subject to a civil penalty not to exceed \$5,000.

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

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

228 (d) Nothing in this Subsection (11) prohibits a person who obtains information from  
229 the database under Subsection (8)(d) or (e) from:

230 (i) including the information in the person's medical chart or file for access by a person  
231 authorized to review the medical chart or file; or

232 (ii) providing the information to a person in accordance with the requirements of the  
233 Health Insurance Portability and Accountability Act of 1996.

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

239 (i) refuse to issue a license to the individual;

240 (ii) refuse to renew the individual's license;

241 (iii) revoke, suspend, restrict, or place on probation the license;

242 (iv) issue a public or private reprimand to the individual;

243 (v) issue a cease and desist order; and

244 (vi) impose a civil penalty of not more than \$1,000 for each dispensed prescription



245 regarding which the required information is not submitted.

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

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

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

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

254 (a) the Commerce Service Fund; and

255 (b) the General Fund.

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

258 (16) (a) Except as provided in Subsection (16)(b), data provided to, maintained in, or  
259 accessed from the database that may be identified to, or with, a particular person is not subject  
260 to discovery, subpoena, or similar compulsory process in any civil, judicial, administrative, or  
261 legislative proceeding, nor shall any individual or organization with lawful access to the data  
262 be compelled to testify with regard to the data.

263 (b) The restrictions in Subsection (16)(a) do not apply to:

264 (i) a criminal proceeding; or

265 (ii) a civil, judicial, or administrative action brought to enforce the provisions of this  
266 section, Section 58-37-7.7, or Section 58-37-7.8.

267 (17) (a) A practitioner described in Subsection (8)(d) may designate up to three  
268 employees to access information from the database under Subsection (8)(e).

269 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
270 Administrative Rulemaking Act, to establish background check procedures to determine  
271 whether an employee designated under Subsection (8)(e)(i) should be granted access to the  
272 database.

273 (c) The division shall grant an employee designated under Subsection (8)(e)(i) access  
274 to the database, unless the division determines, based on a background check, that the  
275 employee poses a security risk to the information contained in the database.

276           (d) The division may impose a fee, in accordance with Section 63J-1-303, on a  
277 practitioner who designates an employee under Subsection (8)(e)(i), to pay for the costs  
278 incurred by the division to conduct the background check and make the determination  
279 described in Subsection (17)(c).

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

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

286           (19) A person who is a relative of a deceased individual is not entitled to access  
287 information from the database relating to the deceased individual based on the fact or claim  
288 that the person is:

- 289           (a) related to the deceased individual; or
- 290           (b) subrogated to the rights of the deceased individual.

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**Legislative Review Note**  
**as of 1-15-09 12:46 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 106 - Controlled Substance Database Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will require a one-time appropriations of \$5,000 from the Commerce Service Fund in order to reprogram the Controlled Substance Database.

|                            | <u>2009</u><br><u>Approp.</u> | <u>2010</u><br><u>Approp.</u> | <u>2011</u><br><u>Approp.</u> | <u>2009</u><br><u>Revenue</u> | <u>2010</u><br><u>Revenue</u> | <u>2011</u><br><u>Revenue</u> |
|----------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Commerce Service, One-time | \$0                           | \$5,000                       | \$0                           | \$0                           | \$0                           | \$0                           |
| <b>Total</b>               | <b>\$0</b>                    | <b>\$5,000</b>                | <b>\$0</b>                    | <b>\$0</b>                    | <b>\$0</b>                    | <b>\$0</b>                    |

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and businesses may benefit from this change in statute.