

1 **ACCESS TO CONTROLLED SUBSTANCE DATABASE**

2 **REVISIONS**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Steve Eliason**

6 Senate Sponsor: Wayne L. Niederhauser

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Controlled Substance Database Act regarding parties who have
11 access to the database.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides controlled substance database access to employees of the Office of Internal
15 Audit and Program Integrity within the Department of Health who are engaged in
16 their specified duty of ensuring Medicaid program integrity.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **58-37f-301**, as enacted by Laws of Utah 2010, Chapter 287 and last amended by
24 Coordination Clause, Laws of Utah 2010, Chapter 312

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

27 Section 1. Section **58-37f-301** is amended to read:

28 **58-37f-301. Access to database.**

29 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

30 Administrative Rulemaking Act, to:

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

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

35 (2) The division shall make information in the database available only to the following
36 individuals, in accordance with the requirements of this chapter and division rules:

37 (a) personnel of the division specifically assigned to conduct investigations related to
38 controlled substance laws under the jurisdiction of the division;

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

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

44 (i) whom the director of the Department of Health assigns to conduct scientific studies
45 regarding the use or abuse of controlled substances, provided that the identity of the individuals
46 and pharmacies in the database are confidential and are not disclosed in any manner to any
47 individual who is not directly involved in the scientific studies; or

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

51 (d) a licensed practitioner having authority to prescribe controlled substances, to the
52 extent the information:

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

54 (B) is sought by the practitioner for the purpose of:

55 (I) prescribing or considering prescribing any controlled substance to the current or
56 prospective patient;

57 (II) diagnosing the current or prospective patient;

58 (III) providing medical treatment or medical advice to the current or prospective
59 patient; or
60 (IV) determining whether the current or prospective patient:
61 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;
62 or
63 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
64 substance from the practitioner;
65 (ii) (A) relates specifically to a former patient of the practitioner; and
66 (B) is sought by the practitioner for the purpose of determining whether the former
67 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled
68 substance from the practitioner;
69 (iii) relates specifically to an individual who has access to the practitioner's Drug
70 Enforcement Administration identification number, and the practitioner suspects that the
71 individual may have used the practitioner's Drug Enforcement Administration identification
72 number to fraudulently acquire or prescribe a controlled substance;
73 (iv) relates to the practitioner's own prescribing practices, except when specifically
74 prohibited by the division by administrative rule;
75 (v) relates to the use of the controlled substance database by an employee of the
76 practitioner, described in Subsection (2)(e); or
77 (vi) relates to any use of the practitioner's Drug Enforcement Administration
78 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
79 controlled substance;
80 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in
81 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:
82 (i) the employee is designated by the practitioner as an individual authorized to access
83 the information on behalf of the practitioner;
84 (ii) the practitioner provides written notice to the division of the identity of the
85 employee; and

86 (iii) the division:
87 (A) grants the employee access to the database; and
88 (B) provides the employee with a password that is unique to that employee to access
89 the database in order to permit the division to comply with the requirements of Subsection
90 58-37f-203(3)(b) with respect to the employee;
91 (f) a licensed pharmacist having authority to dispense a controlled substance to the
92 extent the information is sought for the purpose of:
93 (i) dispensing or considering dispensing any controlled substance; or
94 (ii) determining whether a person:
95 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
96 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
97 substance from the pharmacist;
98 (g) federal, state, and local law enforcement authorities, and state and local
99 prosecutors, engaged as a specified duty of their employment in enforcing laws:
100 (i) regulating controlled substances; or
101 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;
102 (h) employees of the Office of Internal Audit and Program Integrity within the
103 Department of Health who are engaged in their specified duty of ensuring Medicaid program
104 integrity under Section 26-18-2.3;
105 [~~(h)~~] (i) a mental health therapist, if:
106 (i) the information relates to a patient who is:
107 (A) enrolled in a licensed substance abuse treatment program; and
108 (B) receiving treatment from, or under the direction of, the mental health therapist as
109 part of the patient's participation in the licensed substance abuse treatment program described
110 in Subsection (2)[~~(h)~~](i)(A);
111 (ii) the information is sought for the purpose of determining whether the patient is
112 using a controlled substance while the patient is enrolled in the licensed substance abuse
113 treatment program described in Subsection (2)[~~(h)~~](i)(A); and

114 (iii) the licensed substance abuse treatment program described in Subsection
115 (2)~~(h)~~(i)(A) is associated with a practitioner who:
116 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
117 pharmacist; and
118 (B) is available to consult with the mental health therapist regarding the information
119 obtained by the mental health therapist, under this Subsection (2)~~(h)~~(i), from the database;
120 and
121 ~~(i)~~ (j) an individual who is the recipient of a controlled substance prescription entered
122 into the database, upon providing evidence satisfactory to the division that the individual
123 requesting the information is in fact the individual about whom the data entry was made.
124 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three
125 employees to access information from the database under Subsection (2)(e).
126 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
127 Administrative Rulemaking Act, to establish background check procedures to determine
128 whether an employee designated under Subsection (2)(e)(i) should be granted access to the
129 database.
130 (c) The division shall grant an employee designated under Subsection (2)(e)(i) access
131 to the database, unless the division determines, based on a background check, that the
132 employee poses a security risk to the information contained in the database.
133 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
134 practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs
135 incurred by the division to conduct the background check and make the determination
136 described in Subsection (3)(b).
137 (4) (a) An individual who is granted access to the database based on the fact that the
138 individual is a licensed practitioner or a mental health therapist shall be denied access to the
139 database when the individual is no longer licensed.
140 (b) An individual who is granted access to the database based on the fact that the
141 individual is a designated employee of a licensed practitioner shall be denied access to the

142 database when the practitioner is no longer licensed.