

1 **CONTROLLED SUBSTANCE DATABASE AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Bradley M. Daw

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to access to the Controlled Substance Database
10 and requires a physician to review the database before writing a first prescription to a
11 patient for a schedule II or schedule III controlled substance.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ authorizes certain individuals to access the controlled substance database for the
15 purpose of reviewing a patient's request for workers' compensation benefits;
16 ▶ requires that a physician review the controlled substance database before writing a
17 first prescription for a schedule II or schedule III controlled substance to check for
18 prescription duplication, drug over-use, or drug abuse; and
19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **58-37f-301**, as enacted by Laws of Utah 2010, Chapter 287 and last amended by
27 Coordination Clause, Laws of Utah 2010, Chapter 312



28 ENACTS:

29 **58-37f-704**, Utah Code Annotated 1953



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

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

33 **58-37f-301. Access to database.**

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

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

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

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

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

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

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

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

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

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

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

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

90 employee; and

91 (iii) the division:

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

93 (B) provides the employee with a password that is unique to that employee to access
94 the database in order to permit the division to comply with the requirements of Subsection
95 58-37f-203(3)(b) with respect to the employee;

96 (f) a licensed pharmacist having authority to dispense a controlled substance to the
97 extent the information is sought for the purpose of:

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

99 (ii) determining whether a person:

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

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

103 (g) federal, state, and local law enforcement authorities, and state and local
104 prosecutors, engaged as a specified duty of their employment in enforcing laws:

105 (i) regulating controlled substances; or

106 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

107 (h) a mental health therapist, if:

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

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

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

113 (ii) the information is sought for the purpose of determining whether the patient is
114 using a controlled substance while the patient is enrolled in the licensed substance abuse
115 treatment program described in Subsection (2)(h)(i)(A); and

116 (iii) the licensed substance abuse treatment program described in Subsection
117 (2)(h)(i)(A) is associated with a practitioner who:

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

120 (B) is available to consult with the mental health therapist regarding the information

121 obtained by the mental health therapist, under this Subsection (2)(h), from the database; [~~and~~]

122 (i) an individual who is the recipient of a controlled substance prescription entered into
123 the database, upon providing evidence satisfactory to the division that the individual requesting
124 the information is in fact the individual about whom the data entry was made[-];

125 (j) the following licensed physicians for the purpose of reviewing and offering an
126 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
127 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

128 (i) a member of the medical panel described in Section 34A-2-601;

129 (ii) the medical director for the Labor Commission;

130 (iii) the medical director for a workers' compensation insurer; or

131 (iv) the medical director for a self-insured employer; and

132 (k) a physician for the purpose of checking for prescription duplication, drug over-use,
133 or drug abuse pursuant to Section 58-37f-704.

134 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three
135 employees to access information from the database under Subsection (2)(e).

136 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
137 Administrative Rulemaking Act, to establish background check procedures to determine
138 whether an employee designated under Subsection (2)(e)(i) should be granted access to the
139 database.

140 (c) The division shall grant an employee designated under Subsection (2)(e)(i) access
141 to the database, unless the division determines, based on a background check, that the
142 employee poses a security risk to the information contained in the database.

143 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
144 practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs
145 incurred by the division to conduct the background check and make the determination
146 described in Subsection (3)(b).

147 (4) (a) An individual who is granted access to the database based on the fact that the
148 individual is a licensed practitioner or a mental health therapist shall be denied access to the
149 database when the individual is no longer licensed.

150 (b) An individual who is granted access to the database based on the fact that the
151 individual is a designated employee of a licensed practitioner shall be denied access to the

152 database when the practitioner is no longer licensed.

153 Section 2. Section **58-37f-704** is enacted to read:

154 **58-37f-704. Requirement to check controlled substance database.**

155 A licensed physician shall review the database before writing a first prescription to a
156 patient for a schedule II or schedule III controlled substance to determine if there is evidence
157 relating to the patient of:

158 (1) prescription duplication;

159 (2) drug over-use; or

160 (3) drug abuse.

Legislative Review Note
as of 2-15-11 10:49 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 248

SHORT TITLE: **Controlled Substance Database Amendments**

SPONSOR: **Bramble, C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost about \$5,000 for programming. Appropriations from the Commerce Service Fund affect the transfer to the General Fund.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund, One-Time	\$0	(\$5,000)	\$0
Total Revenue	\$0	(\$5,000)	\$0
Expenditure:			
Commerce Service, One-time	\$0	\$5,000	\$0
Total Expenditure	\$0	\$5,000	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$10,000)	\$0
Net Impact, General/Education Funds	\$0	(\$5,000)	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.