

HB0257S01 compared with HB0257

~~{deleted text}~~ shows text that was in HB0257 but was deleted in HB0257S01.

inserted text shows text that was not in HB0257 but was inserted into HB0257S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Bradley M. Daw proposes the following substitute bill:

CONTROLLED SUBSTANCE DATABASE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies Title 58, Chapter 37f, Controlled Substance Database Act, regarding use of the database to obtain information from other states or the federal government, access to the database by designated employees and practitioners, and the entering of pain management contracts in the database.

Highlighted Provisions:

This bill:

- ▶ prohibits unauthorized use of the controlled substance database as a means of obtaining information from other states or a federal drug monitoring program;
- ▶ provides for the designation by a practitioner of persons who are employed by the same business as the practitioner to gain access to the database at the request of the practitioner; and

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- ▶ provides a procedure for an emergency room employee to look up information in the database for a practitioner who is treating an emergency room patient~~{, and}~~;
~~{~~ ————— authorizes practitioners who enter into pain management contracts with patients to provide a record of the contract to the division to be entered in the database.

~~{~~Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{~~ ————— ~~58-37f-203~~, as enacted by Laws of Utah 2010, Chapter 287

~~{~~ ————— ~~58-37f-301~~, as last amended by Laws of Utah 2011, Chapters 38, 151, and 226

~~58-37f-601~~, as enacted by Laws of Utah 2010, Chapter 287

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

Section 1. Section ~~{58-37f-203}~~58-37f-301 is amended to read:

~~{~~ ————— ~~58-37f-203. Submission, collection, and maintenance of data.~~

————— (1) The pharmacist in charge of the drug outlet where a controlled substance is dispensed shall submit the data described in this section to the division:

————— (a) in accordance with the requirements of this section;

————— (b) in accordance with the procedures established by the division; and

————— (c) in the format established by the division.

————— (2) The pharmacist described in Subsection (1) shall, for each controlled substance dispensed by a pharmacist under the pharmacist's supervision other than those dispensed for an inpatient at a health care facility, submit to the division the following information:

————— (a) the name of the prescribing practitioner;

————— (b) the date of the prescription;

————— (c) the date the prescription was filled;

————— (d) the name of the individual for whom the prescription was written;

————— (e) positive identification of the individual receiving the prescription, including the type of identification and any identifying numbers on the identification;

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- ~~_____ (f) the name of the controlled substance;~~
- ~~_____ (g) the quantity of the controlled substance prescribed;~~
- ~~_____ (h) the strength of the controlled substance;~~
- ~~_____ (i) the quantity of the controlled substance dispensed;~~
- ~~_____ (j) the dosage quantity and frequency as prescribed;~~
- ~~_____ (k) the name of the drug outlet dispensing the controlled substance;~~
- ~~_____ (l) the name of the pharmacist dispensing the controlled substance; and~~
- ~~_____ (m) other relevant information as required by division rule.~~
- ~~_____ (3) (a) (i) A practitioner who is licensed to prescribe a controlled substance and who establishes a pain management agreement or contract with any individual may notify the division under Subsection (3)(a)(ii) that the practitioner has entered into the agreement or contract so that the division may enter notice of the agreement or contract in the database.~~
- ~~_____ (ii) The physician may notify the division of a pain management agreement or contract only if the individual who is a party to the agreement or contract has consented in writing that the physician may notify the division.~~
- ~~_____ (b) The notification to the division of the pain management agreement or contract shall include the name and license number of the practitioner, the name and street address of the individual with whom the agreement or contract is made, and the date on which the agreement or contract is entered into.~~
- ~~_____ (c) If a pain management agreement or contract under this section is terminated by the practitioner or the individual who entered into the agreement or contract with the practitioner, the practitioner shall advise the division of the termination.~~
- ~~_____ (d) (i) If notified by the practitioner under Subsection (3)(a), the division shall enter the name of the practitioner and the name of the person who has entered into the agreement or the contract with the practitioner in the database, and shall also enter the termination of the agreement or contract if notified by the practitioner.~~
- ~~_____ (ii) The division shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing procedures for providing written consent of the individual, notifying the division, and entering the contract or agreement, including ensuring that only the minimal identification of the individual is made available as necessary to provide information to practitioners.~~

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~~— [(3)] (4) (a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the electronic format in which the information required under this section shall be submitted to the division.~~

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

~~— (i) the identification of each individual who requests or receives information from the database;~~

~~— (ii) the information provided to each individual; and~~

~~— (iii) the date and time that the information is requested or provided.~~

~~— Section 2. Section **58-37f-301** is amended to read:~~

‡ **58-37f-301. Access to database.**

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

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

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

(2) The division shall make information in the database and information obtained from other state or federal prescription monitoring programs by means of the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

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

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

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

(i) whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, provided that the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any

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individual who is not directly involved in the scientific studies; or

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

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

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

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

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

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

or

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

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

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

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

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

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(e); ~~or~~

(vi) relates to any use of the practitioner's Drug Enforcement Administration

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identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;~~{ or }~~

~~{ (vii) relates to a patient who has a pain management contract with a licensed practitioner;~~

† (e) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

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

(iii) the division:

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

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

(f) an employee of the same business that employs a licensed practitioner under Subsection (2)(d) if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner and the employing business provide written notice to the division of the identity of the designated employee; and

(iii) the division:

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

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

~~{(f)}~~ (g) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is sought for the purpose of:

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

(ii) determining whether a person:

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

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

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

(i) regulating controlled substances; or

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

~~(h)~~ (i) employees of the Office of Internal Audit and Program Integrity within the Department of Health who are engaged in their specified duty of ensuring Medicaid program integrity under Section 26-18-2.3;

~~(i)~~ (j) a mental health therapist, if:

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

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

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

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

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

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

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)~~(i)~~(j), from the database;

~~(j)~~ (k) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made;

~~(k)~~ (l) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title 63J, Chapter 4a, Part 2, Office Duties and Powers; and

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

- (i) a member of the medical panel described in Section 34A-2-601; or
- (ii) a physician offering a second opinion regarding treatment.

(3) (a) A practitioner described in Subsection (2)(d) may designate up to three employees to access information from the database under Subsection (2)(e), (2)(f), or (4)(c).

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

(i) establish background check procedures to determine whether an employee designated under Subsection (2)(e)~~(f)~~, (2)(f), or (4c) should be granted access to the database[-]; and

(ii) establish the information to be provided by an emergency room employee under Subsection (4).

(c) The division shall grant an employee designated under Subsection (2)(e)~~(f)~~, (2)(f), or (4)(c) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(4) (a) An individual who is employed in the emergency room of a hospital may exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if the individual is designated under Subsection (4)(c) and the licensed practitioner:

- (i) is employed in the emergency room;
- (ii) is treating an emergency room patient for an emergency medical condition; and
- (iii) requests that an individual employed in the emergency room and designated under

Subsection (4)(c) obtain information regarding the patient from the database as needed in the course of treatment.

(b) The emergency room employee obtaining information from the database shall, when gaining access to the database, provide to the database the name and any additional identifiers regarding the requesting practitioner as required by division administrative rule established under Subsection (3)(b).

(c) An individual employed in the emergency room under this Subsection (4) may obtain information from the database as provided in Subsection (4)(a) if:

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(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner and the hospital operating the emergency room provide written notice to the division of the identity of the designated employee; and

(iii) the division:

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

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

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(e)~~(f)~~, (2)(f), or (4)(c) to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

~~(4)~~ (5) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

Section ~~37~~2. Section **58-37f-601** is amended to read:

58-37f-601. Unlawful release or use of database information -- Criminal and civil penalties.

(1) Any person who knowingly and intentionally releases any information in the database or knowingly and intentionally releases any information obtained from other state or federal prescription monitoring programs by means of the database in violation of the limitations under Part 3, Access, is guilty of a third degree felony.

(2) (a) Any person who obtains or attempts to obtain information from the database or from any other state or federal prescription monitoring programs by means of the database by misrepresentation or fraud is guilty of a third degree felony.

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

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felony.

(3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person any information obtained from the database or from any other state or federal prescription monitoring programs by means of the database for any purpose other than those specified in Part 3, Access.

(b) Each separate violation of this Subsection (3) is a third degree felony and is also subject to a civil penalty not to exceed \$5,000.

(c) The procedure for determining a civil violation of this Subsection (3) ~~[shall be]~~ is in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(d) Civil penalties assessed under this Subsection (3) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(e) ~~[Nothing in this]~~ This Subsection (3) ~~[prohibits]~~ does not prohibit a person who obtains information from the database under Subsection 58-37f-301(2)(d) ~~[or], (e), (f), or (4)(c)]~~ from:

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

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

†

Legislative Review Note

~~as of 11-8-11 3:34 PM~~

~~Office of Legislative Research and General Counsel}~~