

Representative Christopher N. Herrod proposes the following substitute bill:

HOSPICE PHARMACY DISPENSING OF MEDICATION

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christopher N. Herrod

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies Title 58, Chapter 37, Utah Controlled Substances Act, by amending the procedure for dispensing and filling a verbal prescription for a terminally ill patient in a licensed hospice.

Highlighted Provisions:

This bill:

- ▶ permits a prescribing practitioner to give a verbal prescription for a Schedule II controlled substance for use by a terminally ill patient in a licensed hospice, not to exceed a seven day supply;
- ▶ permits a pharmacy to fill a verbal prescription for a Schedule II controlled substance in certain circumstances for use by a terminally ill patient in a licensed hospice, not to exceed a seven day supply; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **58-37-6**, as last amended by Laws of Utah 2011, Chapters 12 and 214

28 **58-37f-502**, as last amended by Laws of Utah 2010, Chapter 391 and renumbered and
29 amended by Laws of Utah 2010, Chapter 287

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

32 Section 1. Section **58-37-6** is amended to read:

33 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
34 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
35 **required -- Prescriptions.**

36 (1) (a) The division may adopt rules relating to the licensing and control of the
37 manufacture, distribution, production, prescription, administration, dispensing, conducting of
38 research with, and performing of laboratory analysis upon controlled substances within this
39 state.

40 (b) The division may assess reasonable fees to defray the cost of issuing original and
41 renewal licenses under this chapter pursuant to Section 63J-1-504.

42 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
43 administers, conducts research with, or performs laboratory analysis upon any controlled
44 substance in Schedules II through V within this state, or who proposes to engage in
45 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting
46 research with, or performing laboratory analysis upon controlled substances included in
47 Schedules II through V within this state shall obtain a license issued by the division.

48 (ii) The division shall issue each license under this chapter in accordance with a
49 two-year renewal cycle established by rule. The division may by rule extend or shorten a
50 renewal period by as much as one year to stagger the renewal cycles it administers.

51 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
52 administer, conduct research with, or perform laboratory analysis upon controlled substances in
53 Schedules II through V within this state may possess, manufacture, produce, distribute,
54 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
55 those substances to the extent authorized by their license and in conformity with this chapter.

56 (c) The following persons are not required to obtain a license and may lawfully possess

57 controlled substances under this section:

58 (i) an agent or employee, except a sales representative, of any registered manufacturer,
59 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
60 usual course of the person's business or employment; however, nothing in this subsection shall
61 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an
62 inventory of controlled substances separate from the location of the person's employer's
63 registered and licensed place of business;

64 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
65 warehouseman, who possesses any controlled substance in the usual course of the person's
66 business or employment; and

67 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to
68 a lawful order of a practitioner.

69 (d) The division may enact rules waiving the license requirement for certain
70 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
71 practitioners, or laboratories performing analysis if consistent with the public health and safety.

72 (e) A separate license is required at each principal place of business or professional
73 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
74 with, or performs laboratory analysis upon controlled substances.

75 (f) The division may enact rules providing for the inspection of a licensee or applicant's
76 establishment, and may inspect the establishment according to those rules.

77 (3) (a) Upon proper application, the division shall license a qualified applicant to
78 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
79 controlled substances included in Schedules I through V, unless it determines that issuance of a
80 license is inconsistent with the public interest. The division shall not issue a license to any
81 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining
82 public interest, the division shall consider whether or not the applicant has:

83 (i) maintained effective controls against diversion of controlled substances and any
84 Schedule I or II substance compounded from any controlled substance into other than
85 legitimate medical, scientific, or industrial channels;

86 (ii) complied with applicable state and local law;

87 (iii) been convicted under federal or state laws relating to the manufacture, distribution,

88 or dispensing of substances;

89 (iv) past experience in the manufacture of controlled dangerous substances;

90 (v) established effective controls against diversion; and

91 (vi) complied with any other factors that the division establishes that promote the

92 public health and safety.

93 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,

94 produce, distribute, conduct research with, or perform laboratory analysis upon controlled

95 substances in Schedule I other than those specified in the license.

96 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with

97 substances in Schedules II through V if they are authorized to administer, dispense, or conduct

98 research under the laws of this state.

99 (ii) The division need not require a separate license for practitioners engaging in

100 research with nonnarcotic controlled substances in Schedules II through V where the licensee is

101 already licensed under this chapter in another capacity.

102 (iii) With respect to research involving narcotic substances in Schedules II through V,

103 or where the division by rule requires a separate license for research of nonnarcotic substances

104 in Schedules II through V, a practitioner shall apply to the division prior to conducting

105 research.

106 (iv) Licensing for purposes of bona fide research with controlled substances by a

107 practitioner considered qualified may be denied only on a ground specified in Subsection (4),

108 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard

109 adequately the practitioner's supply of substances against diversion from medical or scientific

110 use.

111 (v) Practitioners registered under federal law to conduct research in Schedule I

112 substances may conduct research in Schedule I substances within this state upon furnishing the

113 division evidence of federal registration.

114 (d) Compliance by manufacturers, producers, and distributors with the provisions of

115 federal law respecting registration, excluding fees, entitles them to be licensed under this

116 chapter.

117 (e) The division shall initially license those persons who own or operate an

118 establishment engaged in the manufacture, production, distribution, dispensation, or

119 administration of controlled substances prior to April 3, 1980, and who are licensed by the
120 state.

121 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed
122 on probation, or revoked by the division upon finding that the applicant or licensee has:

123 (i) materially falsified any application filed or required pursuant to this chapter;

124 (ii) been convicted of an offense under this chapter or any law of the United States, or
125 any state, relating to any substance defined as a controlled substance;

126 (iii) been convicted of a felony under any other law of the United States or any state
127 within five years of the date of the issuance of the license;

128 (iv) had a federal registration or license denied, suspended, or revoked by competent
129 federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense
130 controlled substances;

131 (v) had the licensee's license suspended or revoked by competent authority of another
132 state for violation of laws or regulations comparable to those of this state relating to the
133 manufacture, distribution, or dispensing of controlled substances;

134 (vi) violated any division rule that reflects adversely on the licensee's reliability and
135 integrity with respect to controlled substances;

136 (vii) refused inspection of records required to be maintained under this chapter by a
137 person authorized to inspect them; or

138 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the
139 purpose of manipulating human hormonal structure so as to:

140 (A) increase muscle mass, strength, or weight without medical necessity and without a
141 written prescription by any practitioner in the course of the practitioner's professional practice;

142 or

143 (B) improve performance in any form of human exercise, sport, or game.

144 (b) The division may limit revocation or suspension of a license to a particular
145 controlled substance with respect to which grounds for revocation or suspension exist.

146 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
147 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
148 Occupational and Professional Licensing Act, and conducted in conjunction with the
149 appropriate representative committee designated by the director of the department.

150 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
151 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
152 except where the division is designated by law to perform those functions, or, when not
153 designated by law, is designated by the executive director of the Department of Commerce to
154 conduct the proceedings.

155 (d) (i) The division may suspend any license simultaneously with the institution of
156 proceedings under this section if it finds there is an imminent danger to the public health or
157 safety.

158 (ii) Suspension shall continue in effect until the conclusion of proceedings, including
159 judicial review, unless withdrawn by the division or dissolved by a court of competent
160 jurisdiction.

161 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
162 substances owned or possessed by the licensee may be placed under seal in the discretion of the
163 division.

164 (ii) Disposition may not be made of substances under seal until the time for taking an
165 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,
166 orders the sale of perishable substances and the proceeds deposited with the court.

167 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

168 (f) The division shall notify promptly the Drug Enforcement Administration of all
169 orders suspending or revoking a license and all forfeitures of controlled substances.

170 (g) If an individual's Drug Enforcement Administration registration is denied, revoked,
171 surrendered, or suspended, the division shall immediately suspend the individual's controlled
172 substance license, which shall only be reinstated by the division upon reinstatement of the
173 federal registration, unless the division has taken further administrative action under
174 Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled
175 substance license.

176 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and
177 inventories in conformance with the record keeping and inventory requirements of federal and
178 state law and any additional rules issued by the division.

179 (b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or
180 other person who is authorized to administer or professionally use a controlled substance shall

181 keep a record of the drugs received by him and a record of all drugs administered, dispensed, or
182 professionally used by him otherwise than by a prescription.

183 (ii) A person using small quantities or solutions or other preparations of those drugs for
184 local application has complied with this Subsection (5)(b) if the person keeps a record of the
185 quantity, character, and potency of those solutions or preparations purchased or prepared by
186 him, and of the dates when purchased or prepared.

187 (6) Controlled substances in Schedules I through V may be distributed only by a
188 licensee and pursuant to an order form prepared in compliance with division rules or a lawful
189 order under the rules and regulations of the United States.

190 (7) (a) A person may not write or authorize a prescription for a controlled substance
191 unless the person is:

192 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state
193 or under the laws of another state having similar standards; and

194 (ii) licensed under this chapter or under the laws of another state having similar
195 standards.

196 (b) A person other than a pharmacist licensed under the laws of this state, or the
197 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not
198 dispense a controlled substance.

199 (c) (i) A controlled substance may not be dispensed without the written prescription of
200 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

201 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in
202 conformity with Subsection (7)(d).

203 (iii) In emergency situations, as defined by division rule, controlled substances may be
204 dispensed upon oral prescription of a practitioner, if:

205 (A) reduced promptly to writing on forms designated by the division and filed by the
206 pharmacy[-]; or

207 (B) the requirements of Subsection (8) are met.

208 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with
209 Subsection (7)(d).

210 (d) Except for emergency situations designated by the division, a person may not issue,
211 fill, compound, or dispense a prescription for a controlled substance unless the prescription is

212 signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of
213 the prescriber as authorized by division rule, and contains the following information:

214 (i) the name, address, and registry number of the prescriber;

215 (ii) the name, address, and age of the person to whom or for whom the prescription is
216 issued;

217 (iii) the date of issuance of the prescription; and

218 (iv) the name, quantity, and specific directions for use by the ultimate user of the
219 controlled substance.

220 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
221 controlled substance.

222 (f) Except when administered directly to an ultimate user by a licensed practitioner,
223 controlled substances are subject to the following restrictions:

224 (i) (A) A prescription for a Schedule II substance may not be refilled.

225 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a
226 one-month's supply, as directed on the daily dosage rate of the prescriptions.

227 (ii) A Schedule III or IV controlled substance may be filled only within six months of
228 issuance, and may not be refilled more than six months after the date of its original issuance or
229 be refilled more than five times after the date of the prescription unless renewed by the
230 practitioner.

231 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's
232 prescription directs, but they may not be refilled one year after the date the prescription was
233 issued unless renewed by the practitioner.

234 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not
235 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
236 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
237 specified separately from the date of issue.

238 (v) A practitioner may issue more than one prescription at the same time for the same
239 Schedule II controlled substance, but only under the following conditions:

240 (A) no more than three prescriptions for the same Schedule II controlled substance may
241 be issued at the same time;

242 (B) no one prescription may exceed a 30-day supply;

243 (C) a second or third prescription shall include the date of issuance and the date for
244 dispensing; and

245 (D) unless the practitioner determines there is a valid medical reason to the contrary,
246 the date for dispensing a second or third prescription may not be fewer than 30 days from the
247 dispensing date of the previous prescription.

248 (vi) Each prescription for a controlled substance may contain only one controlled
249 substance per prescription form and may not contain any other legend drug or prescription
250 item.

251 (g) An order for a controlled substance in Schedules II through V for use by an
252 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this
253 Subsection (7) if the order is:

254 (i) issued or made by a prescribing practitioner who holds an unrestricted registration
255 with the federal Drug Enforcement Administration, and an active Utah controlled substance
256 license in good standing issued by the division under this section, or a medical resident who is
257 exempted from licensure under Subsection 58-1-307(1)(c);

258 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
259 practitioner designates the quantity ordered;

260 (iii) entered upon the record of the patient, the record is signed by the prescriber
261 affirming the prescriber's authorization of the order within 48 hours after filling or
262 administering the order, and the patient's record reflects the quantity actually administered; and

263 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within
264 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by
265 the hospital and the amount taken from the supply is administered directly to the patient
266 authorized to receive it.

267 (h) A practitioner licensed under this chapter may not prescribe, administer, or
268 dispense a controlled substance to a child, without first obtaining the consent required in
269 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except
270 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same
271 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition
272 requiring the administration of a controlled substance for immediate relief of pain or suffering.

273 (i) A practitioner licensed under this chapter may not prescribe or administer dosages

274 of a controlled substance in excess of medically recognized quantities necessary to treat the
275 ailment, malady, or condition of the ultimate user.

276 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense
277 any controlled substance to another person knowing that the other person is using a false name,
278 address, or other personal information for the purpose of securing the controlled substance.

279 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense
280 a controlled substance may not manufacture, distribute, or dispense a controlled substance to
281 another licensee or any other authorized person not authorized by this license.

282 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a
283 symbol required by this chapter or by a rule issued under this chapter.

284 (m) A person licensed under this chapter may not refuse or fail to make, keep, or
285 furnish any record notification, order form, statement, invoice, or information required under
286 this chapter.

287 (n) A person licensed under this chapter may not refuse entry into any premises for
288 inspection as authorized by this chapter.

289 (o) A person licensed under this chapter may not furnish false or fraudulent material
290 information in any application, report, or other document required to be kept by this chapter or
291 willfully make any false statement in any prescription, order, report, or record required by this
292 chapter.

293 (8) A practitioner may dispense a Schedule II controlled substance for use by a
294 terminally ill patient in a licensed hospice by oral prescription if:

295 (a) an emergency situation exists;

296 (b) the practitioner or pharmacy who receives the prescription promptly reduces the
297 prescription to writing on forms designated by the division and filed by the pharmacy;

298 (c) the quantity dispensed is only sufficient to cover the patient for the emergency
299 situation described in Subsection (8)(a), not to exceed seven days; and

300 (d) a valid prescription is delivered to the pharmacist within seven working days after
301 the day on which the oral prescription is made, in a format designated by the division by rule.

302 [~~8~~] (9) (a) (i) Any person licensed under this chapter who is found by the division to
303 have violated any of the provisions of Subsections (7)(k) through (o) or Subsection [~~(10)~~] (11)
304 is subject to a penalty not to exceed \$5,000. The division shall determine the procedure for

305 adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

306 (ii) The division shall deposit all penalties collected under Subsection [~~(8)~~] (9)(a)(i) in
307 the General Fund as a dedicated credit to be used by the division under Subsection
308 58-37f-502(1).

309 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j)
310 or Subsection [~~(10)~~] (11) is:

- 311 (i) upon first conviction, guilty of a class B misdemeanor;
- 312 (ii) upon second conviction, guilty of a class A misdemeanor; and
- 313 (iii) on third or subsequent conviction, guilty of a third degree felony.

314 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through
315 (o) shall upon conviction be guilty of a third degree felony.

316 [~~(9)~~] (10) Any information communicated to any licensed practitioner in an attempt to
317 unlawfully procure, or to procure the administration of, a controlled substance is not considered
318 to be a privileged communication.

319 [~~(10)~~] (11) A person holding a valid license under this chapter who is engaged in
320 medical research may produce, possess, or administer, but may not prescribe or dispense, a
321 controlled substance listed in Section 58-37-4.2.

322 Section 2. Section **58-37f-502** is amended to read:

323 **58-37f-502. Use of dedicated credits -- Controlled Substance Database --**
324 **Collection of penalties.**

325 (1) The director may use the money deposited in the General Fund as a dedicated credit
326 under Subsections 58-37-6[~~(8)~~](9)(a), 58-37f-601(3)(d), and 58-37f-602(2) for the following
327 purposes:

- 328 (a) maintenance and replacement of the database equipment, including hardware and
329 software;
- 330 (b) training of staff; and
- 331 (c) pursuit of external grants and matching funds.

332 (2) The director of the division may collect any penalty imposed under Subsections
333 58-37-6[~~(8)~~](9)(a), 58-37f-601(3)(d), and 58-37f-602(2) and which is not paid by:

- 334 (a) referring the matter to the Office of State Debt Collection or a collection agency; or
- 335 (b) bringing an action in the district court of the county in which the person owing the

336 debt resides or in the county where the office of the director is located.

337 (3) The director may seek legal assistance from the attorney general or the county or
338 district attorney of the district in which the action is brought to collect the fine.

339 (4) The court shall award reasonable attorney fees and costs to the division for
340 successful collection actions under Subsection (2)(b).