

PRESCRIPTION DATABASE REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies the Controlled Substance Database Act regarding use of information in the database.

Highlighted Provisions:

This bill:

▶ provides that a person may request that the division provide to the person his or her records that are in the controlled substance database;

▶ provides a procedure for a patient to correct erroneous information in the database;

▶ requires law enforcement to use a search warrant to gain database information related to a controlled substance investigation and requires specification of the person regarding whom the information is sought;

▶ authorizes a person whose information is in the database to obtain a list of persons who have had access to that person's information ~~§~~→ , **except when the information is subject to an investigation** ←~~§~~ ;

▶ states that a practitioner or pharmacist is not required to check the database regarding a person for whom the practitioner or pharmacist is prescribing or dispensing a prescription drug and provides there is no civil liability for not checking the database; and

▶ adds the standards of negligently or recklessly to the elements of the criminal offense of unlawfully releasing database information.

Money Appropriated in this Bill:

S.B. 119



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **58-37f-203**, as last amended by Laws of Utah 2014, Chapter 72

34 **58-37f-301**, as last amended by Laws of Utah 2014, Chapters 68 and 401

35 **58-37f-601**, as last amended by Laws of Utah 2014, Chapter 68

36 ENACTS:

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



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

40 Section 1. Section **58-37f-203** is amended to read:

41 **58-37f-203. Submission, collection, and maintenance of data.**

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

- 44 (i) in accordance with the requirements of this section;
- 45 (ii) in accordance with the procedures established by the division; and
- 46 (iii) in the format established by the division.

47 (b) A dispensing medical practitioner licensed under Chapter 17b, Part 8, Dispensing
48 Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, shall comply with
49 the provisions of this section and the dispensing medical practitioner shall assume the duties of
50 the pharmacist under this chapter.

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

- 54 (a) the name of the prescribing practitioner;
- 55 (b) the date of the prescription;
- 56 (c) the date the prescription was filled;
- 57 (d) the name of the individual for whom the prescription was written;
- 58 (e) positive identification of the individual receiving the prescription, including the

59 type of identification and any identifying numbers on the identification;

60 (f) the name of the controlled substance;

61 (g) the quantity of the controlled substance prescribed;

62 (h) the strength of the controlled substance;

63 (i) the quantity of the controlled substance dispensed;

64 (j) the dosage quantity and frequency as prescribed;

65 (k) the name of the drug outlet dispensing the controlled substance; and

66 (l) the name of the pharmacist dispensing the controlled substance[~~;~~and].

67 [~~(m) other relevant information as required by division rule.~~]

68 (3) An individual whose records are in the database may obtain those records upon

69 submission of a written request to the division.

70 (4) (a) A patient whose record is in the database may contact the division in writing to

71 request correction of any of the patient's database information that is incorrect. The patient

72 shall provide a postal address for the division's response.

73 (b) The division shall grant or deny the request within 30 days from receipt of the

74 request and shall advise the requesting patient of its decision by mail postmarked within 35

75 days of receipt of the request.

76 (c) If the division denies a request under this Subsection (4) or does not respond within

77 35 days, the patient may submit an appeal to the ~~State Board of Pharmacy, created in~~

78 ~~Section 58-17b-201] Department of Commerce~~ ~~←~~ ~~State Board of Pharmacy~~, within 60 days after the postmark date of the

78a patient's letter making a

79 request for a correction under this Subsection (4).

80 [~~(3)] (5) (a) The division shall make rules, in accordance with Title 63G, Chapter 3,~~

81 Utah Administrative Rulemaking Act, to establish the electronic format in which the

82 information required under this section shall be submitted to the division.

83 (b) The division shall ensure that the database system records and maintains for

84 reference:

85 (i) the identification of each individual who requests or receives information from the

86 database;

87 (ii) the information provided to each individual; and

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

89 Section 2. Section 58-37f-301 is amended to read:

90 **58-37f-301. Access to database.**

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

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

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

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

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

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

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

108 (i) whom the director of the Department of Health assigns to conduct scientific studies
109 regarding the use or abuse of controlled substances, if the identity of the individuals and
110 pharmacies in the database are confidential ~~and de-identified~~ and are not disclosed in any
111 manner to any individual who is not directly involved in the scientific studies; or

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

115 (d) in accordance with a written agreement entered into with the department, a
116 designee of the director of the Department of Health, who is not an employee of the
117 Department of Health, whom the director of the Department of Health assigns to conduct
118 scientific studies regarding the use or abuse of controlled substances pursuant to an application
119 process established in rule by the Department of Health, if:

120 (i) the designee provides explicit information to the Department of Health regarding

121 the purpose of the scientific studies;

122 (ii) the scientific studies to be conducted by the designee:

123 (A) fit within the responsibilities of the Department of Health for health and welfare;

124 (B) are reviewed and approved by an Institutional Review Board that is approved for
125 human subject research by the United States Department of Health and Human Services; and

126 (C) are not conducted for profit or commercial gain; and

127 (D) are conducted in a research facility, as defined by division rule, that is associated
128 with a university or college in the state accredited by the Northwest Commission on Colleges
129 and Universities;

130 (iii) the designee protects the information as a business associate of the Department of
131 Health; and

132 (iv) the identity of the prescribers, patients, and pharmacies in the database are
133 de-identified, confidential, not disclosed in any manner to the designee or to any individual
134 who is not directly involved in the scientific studies;

135 (e) in accordance with the written agreement entered into with the department and the
136 Department of Health, authorized employees of a managed care organization, as defined in 42
137 C.F.R. Sec. 438, if:

138 (i) the managed care organization contracts with the Department of Health under the
139 provisions of Section [26-18-405](#) and the contract includes provisions that:

140 (A) require a managed care organization employee who will have access to information
141 from the database to submit to a criminal background check; and

142 (B) limit the authorized employee of the managed care organization to requesting either
143 the division or the Department of Health to conduct a search of the database regarding a
144 specific Medicaid enrollee and to report the results of the search to the authorized employee;
145 and

146 (ii) the information is requested by an authorized employee of the managed care
147 organization in relation to a person who is enrolled in the Medicaid program with the managed
148 care organization, and the managed care organization suspects the person may be improperly
149 obtaining or providing a controlled substance;

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

- 152 (i) (A) relates specifically to a current or prospective patient of the practitioner; and
- 153 (B) is provided to or sought by the practitioner for the purpose of:
 - 154 (I) prescribing or considering prescribing any controlled substance to the current or
 - 155 prospective patient;
 - 156 (II) diagnosing the current or prospective patient;
 - 157 (III) providing medical treatment or medical advice to the current or prospective
 - 158 patient; or
 - 159 (IV) determining whether the current or prospective patient:
 - 160 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;
 - 161 or
 - 162 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
 - 163 substance from the practitioner;
 - 164 (ii) (A) relates specifically to a former patient of the practitioner; and
 - 165 (B) is provided to or sought by the practitioner for the purpose of determining whether
 - 166 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
 - 167 controlled substance from the practitioner;
 - 168 (iii) relates specifically to an individual who has access to the practitioner's Drug
 - 169 Enforcement Administration identification number, and the practitioner suspects that the
 - 170 individual may have used the practitioner's Drug Enforcement Administration identification
 - 171 number to fraudulently acquire or prescribe a controlled substance;
 - 172 (iv) relates to the practitioner's own prescribing practices, except when specifically
 - 173 prohibited by the division by administrative rule;
 - 174 (v) relates to the use of the controlled substance database by an employee of the
 - 175 practitioner, described in Subsection (2)(g); or
 - 176 (vi) relates to any use of the practitioner's Drug Enforcement Administration
 - 177 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
 - 178 controlled substance;
 - 179 (g) in accordance with Subsection (3)(a), an employee of a practitioner described in
 - 180 Subsection (2)(f), for a purpose described in Subsection (2)(f)(i) or (ii), if:
 - 181 (i) the employee is designated by the practitioner as an individual authorized to access
 - 182 the information on behalf of the practitioner;

- 183 (ii) the practitioner provides written notice to the division of the identity of the
184 employee; and
- 185 (iii) the division:
- 186 (A) grants the employee access to the database; and
- 187 (B) provides the employee with a password that is unique to that employee to access
188 the database in order to permit the division to comply with the requirements of Subsection
189 [58-37f-203](#)~~(3)~~(4)(b) with respect to the employee;
- 190 (h) an employee of the same business that employs a licensed practitioner under
191 Subsection (2)(f) if:
- 192 (i) the employee is designated by the practitioner as an individual authorized to access
193 the information on behalf of the practitioner;
- 194 (ii) the practitioner and the employing business provide written notice to the division of
195 the identity of the designated employee; and
- 196 (iii) the division:
- 197 (A) grants the employee access to the database; and
- 198 (B) provides the employee with a password that is unique to that employee to access
199 the database in order to permit the division to comply with the requirements of Subsection
200 [58-37f-203](#)~~(3)~~(4)(b) with respect to the employee;
- 201 (i) a licensed pharmacist having authority to dispense a controlled substance to the
202 extent the information is provided or sought for the purpose of:
- 203 (i) dispensing or considering dispensing any controlled substance; or
- 204 (ii) determining whether a person:
- 205 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
- 206 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
207 substance from the pharmacist;
- 208 (j) in accordance with Subsection (3)(a), a licensed pharmacy technician who is an
209 employee of a pharmacy as defined in Section [58-17b-102](#), for the purposes described in
210 Subsection (2)(h)(i) or (ii), if:
- 211 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
212 to access the information on behalf of a licensed pharmacist employed by the pharmacy;
- 213 (ii) the pharmacist-in-charge provides written notice to the division of the identity of

214 the employee; and
215 (iii) the division:
216 (A) grants the employee access to the database; and
217 (B) provides the employee with a password that is unique to that employee to access
218 the database in order to permit the division to comply with the requirements of Subsection
219 [58-37f-203](#)~~(3)~~(4)(b) with respect to the employee;
220 (k) pursuant to a valid search warrant, federal, state, and local law enforcement
221 ~~[authorities,] agencies and state and local prosecutors[;] that are engaged [as a specified duty of~~
222 ~~their employment in enforcing laws:]~~ in an investigation related to:
223 (i) one or more controlled substances; and
224 (ii) a specific person who is a subject of the investigation;
225 ~~[(i) regulating controlled substances;]~~
226 ~~[(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; or]~~
227 ~~[(iii) providing information about a criminal defendant to defense counsel, upon~~
228 ~~request during the discovery process, for the purpose of establishing a defense in a criminal~~
229 ~~case;]~~
230 (l) employees of the Office of Internal Audit and Program Integrity within the
231 Department of Health who are engaged in their specified duty of ensuring Medicaid program
232 integrity under Section [26-18-2.3](#);
233 (m) a mental health therapist, if:
234 (i) the information relates to a patient who is:
235 (A) enrolled in a licensed substance abuse treatment program; and
236 (B) receiving treatment from, or under the direction of, the mental health therapist as
237 part of the patient's participation in the licensed substance abuse treatment program described
238 in Subsection (2)(m)(i)(A);
239 (ii) the information is sought for the purpose of determining whether the patient is
240 using a controlled substance while the patient is enrolled in the licensed substance abuse
241 treatment program described in Subsection (2)(m)(i)(A); and
242 (iii) the licensed substance abuse treatment program described in Subsection
243 (2)(m)(i)(A) is associated with a practitioner who:
244 (A) is a physician, a physician assistant, an advance practice registered nurse, or a

245 pharmacist; and

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

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

251 (o) an individual under Subsection (2)(n) for the purpose of obtaining a list of the
252 persons and entities that have requested or received any information from the database

253 regarding the individual ~~Š~~→ , except if the individual's record is subject to a pending or current
253a investigation as authorized under this Subsection (2) ←Š ;

254 [~~(p)~~] (p) the inspector general, or a designee of the inspector general, of the Office of
255 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
256 Title 63A, Chapter 13, Part 2, Office and Powers; and

257 [~~(q)~~] (q) the following licensed physicians for the purpose of reviewing and offering an
258 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
259 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

261 (ii) a physician offering a second opinion regarding treatment.

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

264 (ii) A pharmacist described in Subsection (2)(i) who is a pharmacist-in-charge may
265 designate up to three employees to access information from the database under Subsection
266 (2)(j).

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

269 (i) establish background check procedures to determine whether an employee
270 designated under Subsection (2)(g), (2)(h), or (4)(c) should be granted access to the database;
271 and

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

274 (c) The division shall grant an employee designated under Subsection (2)(g), (2)(h), or
275 (4)(c) access to the database, unless the division determines, based on a background check, that

276 the employee poses a security risk to the information contained in the database.

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

- 280 (i) is employed in the emergency room;
- 281 (ii) is treating an emergency room patient for an emergency medical condition; and
- 282 (iii) requests that an individual employed in the emergency room and designated under
283 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
284 course of treatment.

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

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

- 291 (i) the employee is designated by the practitioner as an individual authorized to access
292 the information on behalf of the practitioner;
- 293 (ii) the practitioner and the hospital operating the emergency room provide written
294 notice to the division of the identity of the designated employee; and
- 295 (iii) the division:
 - 296 (A) grants the employee access to the database; and
 - 297 (B) provides the employee with a password that is unique to that employee to access
298 the database in order to permit the division to comply with the requirements of Subsection
299 [58-37f-203\(3\)\(b\)](#) with respect to the employee.

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

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

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

310 Section 3. Section **58-37f-601** is amended to read:

311 **58-37f-601. Unlawful release or use of database information -- Criminal and civil**
312 **penalties.**

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

317 (b) Any person who negligently or recklessly releases any information in the database
318 or any information obtained from other state or federal prescription monitoring programs by
319 means of the database in violation of the limitations under Part 3, Access, is guilty of a class C
320 misdemeanor.

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

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

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

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

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

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

338 (e) This Subsection (3) does not prohibit a person who obtains information from the
339 database under Subsection 58-37f-301(2)(f), (g), (i), or (4)(c) from:

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

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

344 Section 4. Section 58-37f-704 is enacted to read:

345 **58-37f-704. Practitioner or pharmacist not obligated to check database when**
346 **prescribing or dispensing -- No liability.**

347 (1) This part does not require a practitioner to obtain information from the database
348 about the patient for whom the practitioner is prescribing a prescription drug.

349 (2) A practitioner or a pharmacist who prescribes or dispenses, respectively, a
350 prescription drug is not liable for damages in any civil action because the practitioner or
351 pharmacist did not obtain or request information from the database at the time of prescribing or
352 dispensing the prescription drug.

Legislative Review Note
as of 1-21-15 7:31 PM

Office of Legislative Research and General Counsel