

1 **PRESCRIPTION DATABASE REVISIONS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Brad M. Daw

6	Cosponsors:	Alvin B. Jackson	Aaron Osmond
7	Jim Dabakis	Peter C. Knudson	Daniel W. Thatcher
8	Luz Escamilla	Mark B. Madsen	
	Deidre M. Henderson		

9

10 **LONG TITLE**

11 **General Description:**

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

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ provides that a person may request that the division provide to the person his or her
17 records that are in the controlled substance database;
- 18 ▶ provides a procedure for a patient to correct erroneous information in the database;
- 19 ▶ requires law enforcement to use a search warrant to gain database information
20 related to a controlled substance investigation and requires specification of the
21 person regarding whom the information is sought;
- 22 ▶ authorizes a person whose information is in the database to obtain a list of persons
23 who have had access to that person's information, except when the information is
24 subject to an investigation;
- 25 ▶ provides that a physician employed as medical director for a licensed workers'
26 compensation insurer or an approved self-insured employer may have access to the
27 database regarding requests for workers' compensation; and

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

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **58-37f-203**, as last amended by Laws of Utah 2014, Chapter 72

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

38 **58-37f-601**, as last amended by Laws of Utah 2014, Chapter 68



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

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

42 **58-37f-203. Submission, collection, and maintenance of data.**

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

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

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

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

- 55 (a) the name of the prescribing practitioner;

- 56 (b) the date of the prescription;
- 57 (c) the date the prescription was filled;
- 58 (d) the name of the individual for whom the prescription was written;
- 59 (e) positive identification of the individual receiving the prescription, including the
60 type of identification and any identifying numbers on the identification;
- 61 (f) the name of the controlled substance;
- 62 (g) the quantity of the controlled substance prescribed;
- 63 (h) the strength of the controlled substance;
- 64 (i) the quantity of the controlled substance dispensed;
- 65 (j) the dosage quantity and frequency as prescribed;
- 66 (k) the name of the drug outlet dispensing the controlled substance; and
- 67 (l) the name of the pharmacist dispensing the controlled substance[~~;~~and].
- 68 [~~(m) other relevant information as required by division rule.~~]

69 (3) An individual whose records are in the database may obtain those records upon
70 submission of a written request to the division.

71 (4) (a) A patient whose record is in the database may contact the division in writing to
72 request correction of any of the patient's database information that is incorrect. The patient
73 shall provide a postal address for the division's response.

74 (b) The division shall grant or deny the request within 30 days from receipt of the
75 request and shall advise the requesting patient of its decision by mail postmarked within 35
76 days of receipt of the request.

77 (c) If the division denies a request under this Subsection (4) or does not respond within
78 35 days, the patient may submit an appeal to the Department of Commerce, within 60 days
79 after the postmark date of the patient's letter making a request for a correction under this
80 Subsection (4).

81 [~~(3)~~] (5) (a) The division shall make rules, in accordance with Title 63G, Chapter 3,
82 Utah Administrative Rulemaking Act, to establish the electronic format in which the
83 information required under this section shall be submitted to the division.

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

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

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

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

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

91 **58-37f-301. Access to database.**

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

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

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

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

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

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

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

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

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

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

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

121 (i) the designee provides explicit information to the Department of Health regarding
122 the purpose of the scientific studies;

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

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

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

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

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

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

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

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

139 (i) the managed care organization contracts with the Department of Health under the

140 provisions of Section 26-18-405 and the contract includes provisions that:

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

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

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

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

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

154 (B) is provided to or sought by the practitioner for the purpose of:

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

157 (II) diagnosing the current or prospective patient;

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

160 (IV) determining whether the current or prospective patient:

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

162 or

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

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

166 (B) is provided to or sought by the practitioner for the purpose of determining whether
167 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a

168 controlled substance from the practitioner;

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

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

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

177 (vi) relates to any use of the practitioner's Drug Enforcement Administration
178 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
179 controlled substance;

180 (g) in accordance with Subsection (3)(a), an employee of a practitioner described in
181 Subsection (2)(f), for a purpose described in Subsection (2)(f)(i) or (ii), if:

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

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

186 (iii) the division:

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

188 (B) provides the employee with a password that is unique to that employee to access
189 the database in order to permit the division to comply with the requirements of Subsection
190 [58-37f-203](#)~~(3)~~(4)(b) with respect to the employee;

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

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

195 (ii) the practitioner and the employing business provide written notice to the division of

196 the identity of the designated employee; and

197 (iii) the division:

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

199 (B) provides the employee with a password that is unique to that employee to access

200 the database in order to permit the division to comply with the requirements of Subsection

201 58-37f-203[(3)](4)(b) with respect to the employee;

202 (i) a licensed pharmacist having authority to dispense a controlled substance to the

203 extent the information is provided or sought for the purpose of:

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

205 (ii) determining whether a person:

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

207 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled

208 substance from the pharmacist;

209 (j) in accordance with Subsection (3)(a), a licensed pharmacy technician who is an

210 employee of a pharmacy as defined in Section 58-17b-102, for the purposes described in

211 Subsection (2)(h)(i) or (ii), if:

212 (i) the employee is designated by the pharmacist-in-charge as an individual authorized

213 to access the information on behalf of a licensed pharmacist employed by the pharmacy;

214 (ii) the pharmacist-in-charge provides written notice to the division of the identity of

215 the employee; and

216 (iii) the division:

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

218 (B) provides the employee with a password that is unique to that employee to access

219 the database in order to permit the division to comply with the requirements of Subsection

220 58-37f-203[(3)](4)(b) with respect to the employee;

221 (k) pursuant to a valid search warrant, federal, state, and local law enforcement

222 [~~authorities,~~] agencies and state and local prosecutors[~~;~~] that are engaged [~~as a specified duty of~~

223 ~~their employment in enforcing laws:~~] in an investigation related to:

- 224 (i) one or more controlled substances; and
- 225 (ii) a specific person who is a subject of the investigation;
- 226 ~~[(i) regulating controlled substances;]~~
- 227 ~~[(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; or]~~
- 228 ~~[(iii) providing information about a criminal defendant to defense counsel, upon~~
- 229 ~~request during the discovery process, for the purpose of establishing a defense in a criminal~~
- 230 ~~case;]~~
- 231 (l) employees of the Office of Internal Audit and Program Integrity within the
- 232 Department of Health who are engaged in their specified duty of ensuring Medicaid program
- 233 integrity under Section [26-18-2.3](#);
- 234 (m) a mental health therapist, if:
- 235 (i) the information relates to a patient who is:
- 236 (A) enrolled in a licensed substance abuse treatment program; and
- 237 (B) receiving treatment from, or under the direction of, the mental health therapist as
- 238 part of the patient's participation in the licensed substance abuse treatment program described
- 239 in Subsection (2)(m)(i)(A);
- 240 (ii) the information is sought for the purpose of determining whether the patient is
- 241 using a controlled substance while the patient is enrolled in the licensed substance abuse
- 242 treatment program described in Subsection (2)(m)(i)(A); and
- 243 (iii) the licensed substance abuse treatment program described in Subsection
- 244 (2)(m)(i)(A) is associated with a practitioner who:
- 245 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
- 246 pharmacist; and
- 247 (B) is available to consult with the mental health therapist regarding the information
- 248 obtained by the mental health therapist, under this Subsection (2)(m), from the database;
- 249 (n) an individual who is the recipient of a controlled substance prescription entered into
- 250 the database, upon providing evidence satisfactory to the division that the individual requesting
- 251 the information is in fact the individual about whom the data entry was made;

252 (o) an individual under Subsection (2)(n) for the purpose of obtaining a list of the
253 persons and entities that have requested or received any information from the database
254 regarding the individual, except if the individual's record is subject to a pending or current
255 investigation as authorized under this Subsection (2);

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

259 [~~(q)~~] (q) the following licensed physicians for the purpose of reviewing and offering an
260 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
261 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

262 (i) a member of the medical panel described in Section 34A-2-601; [~~or~~]

263 (ii) a physician employed as medical director for a licensed workers' compensation
264 insurer or an approved self-insured employer; or

265 [~~(iii)~~] (iii) a physician offering a second opinion regarding treatment.

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

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

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

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

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

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

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

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

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

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

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

- 295 (i) the employee is designated by the practitioner as an individual authorized to access
296 the information on behalf of the practitioner;
- 297 (ii) the practitioner and the hospital operating the emergency room provide written
298 notice to the division of the identity of the designated employee; and
- 299 (iii) the division:

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

301 (B) provides the employee with a password that is unique to that employee to access
302 the database in order to permit the division to comply with the requirements of Subsection
303 [58-37f-203\(3\)\(b\)](#) with respect to the employee.

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

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

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

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

315 **58-37f-601. Unlawful release or use of database information -- Criminal and civil**
316 **penalties.**

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

321 (b) Any person who negligently or recklessly releases any information in the database
322 or any information obtained from other state or federal prescription monitoring programs by
323 means of the database in violation of the limitations under Title 58, Chapter 37f, Part 3,
324 Access, is guilty of a class C misdemeanor.

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

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

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

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

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

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

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

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

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