

1 **ACCESS TO OPIOID PRESCRIPTION INFORMATION VIA**
2 **PRACTITIONER DATA MANAGEMENT SYSTEMS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Mike K. McKell**

6 Senate Sponsor: Curtis S. Bramble

7 Cosponsors: Brad King

8 Rich Cunningham

9
10 **LONG TITLE**

11 **General Description:**

12 This bill amends the Controlled Substance Database Act.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ requires the Division of Occupational and Professional Licensing within the
17 Department of Commerce to make opioid prescription data information in its
18 controlled substance database accessible to an opioid prescriber or pharmacist via
19 the prescriber's or pharmacist's electronic data system;
- 20 ▶ limits access to and use of the information by an electronic data system, a
21 prescriber, or a pharmacist in accordance with rules established by the division;
- 22 ▶ requires rulemaking by the division;
- 23 ▶ requires the division to periodically audit use of the information; and
- 24 ▶ amends Controlled Substance Database Act penalty provisions.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 [58-37f-601](#), as last amended by Laws of Utah 2015, Chapter 326

32 ENACTS:

33 [58-37f-303](#), Utah Code Annotated 1953



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

36 Section 1. Section [58-37f-303](#) is enacted to read:

37 **[58-37f-303](#). Access to opioid prescription information via an electronic data**
38 **system.**

39 (1) As used in this section:

40 (a) "Dispense" means the same as that term is defined in Section [58-17b-102](#).

41 (b) "EDS user":

42 (i) means:

43 (A) a prescriber;

44 (B) a pharmacist; or

45 (C) an individual granted access to the database under Subsection [58-37f-301\(3\)\(c\)](#);

46 and

47 (ii) does not mean an individual whose access to the database has been revoked by the
48 division pursuant to Subsection [58-37f-301\(5\)\(b\)](#).

49 (c) "Electronic data system" means a software product or an electronic service used by:

50 (i) a prescriber to manage electronic health records; or

51 (ii) a pharmacist to manage the dispensing of prescription drugs.

52 (d) "Opioid" means any substance listed in Subsection [58-37-4\(2\)\(b\)\(i\)](#) or [\(2\)\(b\)\(ii\)](#).

53 (e) "Pharmacist" means the same as that term is defined in Section [58-17b-102](#).

54 (f) "Prescriber" means a practitioner, as that term is defined in Section [58-37-2](#), who is
55 licensed under Section [58-37-6](#) to prescribe an opioid.

56 (g) "Prescription drug" means the same as that term is defined in Section [58-17b-102](#).

57 (2) Subject to Subsections (3) through (6), no later than January 1, 2017, the division
58 shall make opioid prescription information in the database available to an EDS user via the
59 user's electronic data system.

60 (3) An electronic data system may be used to make opioid prescription information in
61 the database available to an EDS user only if the electronic data system complies with rules
62 established by the division under Subsection (4).

63 (4) (a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
64 Administrative Rulemaking Act, specifying:

65 (i) an electronic data system's:

66 (A) allowable access to and use of opioid prescription information in the database; and

67 (B) minimum actions that must be taken to ensure that opioid prescription information
68 accessed from the database is protected from inappropriate disclosure or use; and

69 (ii) an EDS user's:

70 (A) allowable access to opioid prescription information in the database via an
71 electronic data system; and

72 (B) allowable use of the information.

73 (b) The rules shall establish:

74 (i) minimum user identification requirements that in substance are the same as the
75 database identification requirements in Section [58-37f-301](#);

76 (ii) user access restrictions that in substance are the same as the database identification
77 requirements in Section [58-37f-301](#); and

78 (iii) any other requirements necessary to ensure that in substance the provisions of
79 Sections [58-37f-301](#) and [58-37f-302](#) apply to opioid prescription information in the database
80 that has been made available to an EDS user via an electronic data system.

81 (5) The division may not make opioid prescription information in the database
82 available to an EDS user via the user's electronic data system if:

83 (a) the electronic data system does not comply with the rules established by the
84 division under Subsection (4); or

85 (b) the EDS user does not comply with the rules established by the division under
86 Subsection (4).

87 (6) (a) The division shall periodically audit the use of opioid prescription information
88 made available to an EDS user via the user's electronic data system.

89 (b) The audit shall review compliance by:

90 (i) the electronic data system with rules established by the division under Subsection
91 (4); and

92 (ii) the EDS user with rules established by the division under Subsection (4).

93 (c) (i) If the division determines by audit or other means that an electronic data system
94 is not in compliance with rules established by the division under Subsection (4), the division
95 shall immediately suspend or revoke the electronic data system's access to opioid prescription
96 information in the database.

97 (ii) If the division determines by audit or other means that an EDS user is not in
98 compliance with rules established by the division under Subsection (4), the division shall
99 immediately suspend or revoke the EDS user's access to opioid prescription information in the
100 database via an electronic data system.

101 (iii) If the division suspends or revokes access to opioid prescription information in the
102 database under Subsection (6)(c)(i) or (6)(c)(ii), the division shall also take any other
103 appropriate corrective or disciplinary action authorized by this chapter or title.

104 (7) The division shall report to the Health and Human Services Interim Committee
105 during the 2017 interim and the 2018 interim on the implementation of this section. The reports
106 shall be made before October 1 each year.

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

108 **58-37f-601. Unlawful release or use of database information -- Criminal and civil**
109 **penalties.**

110 (1) (a) Any person who knowingly and intentionally releases:

111 (i) any information in the database or any information obtained from other state or
112 federal prescription monitoring programs by means of the database in violation of the

113 limitations under Part 3, Access, is guilty of a third degree felony; or

114 (ii) any information in the database accessed under Section 58-37f-303 by an electronic
115 data system, or accessed by a person via an electronic data system, in violation of rules
116 established by the division under Subsection 58-37f-303(4) is guilty of a third degree felony.

117 (b) Any person who negligently or recklessly releases;

118 (i) any information in the database or any information obtained from other state or
119 federal prescription monitoring programs by means of the database in violation of the
120 limitations under [Title 58, Chapter 37f,] Part 3, Access, is guilty of a class C misdemeanor; or

121 (ii) any information in the database accessed under Section 58-37f-303 by an electronic
122 data system, or accessed by a person via an electronic data system, in violation of rules
123 established by the division under Subsection 58-37f-303(4) is guilty of a class C misdemeanor.

124 (2) (a) Any person who obtains or attempts to obtain the following by
125 misrepresentation or fraud is guilty of a third degree felony:

126 (i) information from the database [or];

127 (ii) information from any other state or federal prescription monitoring [programs]
128 program by means of the database [by misrepresentation or fraud is guilty of a third degree
129 felony.]; or

130 (iii) information from the database or any other state or federal prescription monitoring
131 program via an electronic data system under Section 58-37f-303.

132 (b) Any person who obtains or attempts to obtain information from the database,
133 including via an electronic data system under Section 58-37f-303 that has access to the
134 database, for a purpose other than a purpose authorized by this chapter or by rule is guilty of a
135 third degree felony.

136 (3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and
137 intentionally use, release, publish, or otherwise make available to any other person [any] the
138 following information for any purpose other than those specified in Part 3, Access:

139 (i) information obtained from the database [or];

140 (ii) information obtained from any other state or federal prescription monitoring

141 ~~[programs] program~~ by means of the database ~~[for any purpose other than those specified in~~
142 ~~Part 3, Access]; or~~

143 (iii) information in the database accessed under Section 58-37f-303 by:

144 (A) an electronic data system; or

145 (B) a person via an electronic data system.

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

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

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

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

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

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