

1 **CONTROLLED SUBSTANCE PRESCRIPTION**

2 **NOTIFICATION**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brad M. Daw**

6 Senate Sponsor: Curtis S. Bramble

7

LONG TITLE

8 **General Description:**

9 This bill modifies provisions regarding controlled substances.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ amends the Controlled Substance Database Act to allow a person for whom a
13 controlled substance is prescribed to designate a third party who is to be notified
14 when a controlled substance prescription is dispensed to the person; and

15 ▶ authorizes the division to make administrative rules to facilitate implementation of
16 this provision.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **58-37f-301**, as last amended by Laws of Utah 2015, Chapters 89, 326, and 336

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

25 Section 1. Section **58-37f-301** is amended to read:



28 **58-37f-301. Access to database.**

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

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

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

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

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

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

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

46 (i) whom the director of the Department of Health assigns to conduct scientific studies
47 regarding the use or abuse of controlled substances, if the identity of the individuals and
48 pharmacies in the database are confidential and are not disclosed in any manner to any
49 individual who is not directly involved in the scientific studies; or

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

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

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

59 the purpose of the scientific studies;

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

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

62 (B) are reviewed and approved by an Institutional Review Board that is approved for

63 human subject research by the United States Department of Health and Human Services; and

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

65 (D) are conducted in a research facility, as defined by division rule, that is associated

66 with a university or college in the state accredited by one or more regional or national

67 accrediting agencies recognized by the United States Department of Education;

68 (iii) the designee protects the information as a business associate of the Department of

69 Health; and

70 (iv) the identity of the prescribers, patients, and pharmacies in the database are

71 de-identified, confidential, not disclosed in any manner to the designee or to any individual

72 who is not directly involved in the scientific studies;

73 (e) in accordance with the written agreement entered into with the department and the

74 Department of Health, authorized employees of a managed care organization, as defined in 42

75 C.F.R. Sec. 438, if:

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

77 provisions of Section [26-18-405](#) and the contract includes provisions that:

78 (A) require a managed care organization employee who will have access to information

79 from the database to submit to a criminal background check; and

80 (B) limit the authorized employee of the managed care organization to requesting either

81 the division or the Department of Health to conduct a search of the database regarding a

82 specific Medicaid enrollee and to report the results of the search to the authorized employee;

83 and

84 (ii) the information is requested by an authorized employee of the managed care

85 organization in relation to a person who is enrolled in the Medicaid program with the managed

86 care organization, and the managed care organization suspects the person may be improperly

87 obtaining or providing a controlled substance;

88 (f) a licensed practitioner having authority to prescribe controlled substances, to the

89 extent the information:

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

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

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

94 (II) diagnosing the current or prospective patient;

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

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

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

99 or

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

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

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

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

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

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

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

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

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

- 121 (ii) the practitioner provides written notice to the division of the identity of the
122 employee; and
- 123 (iii) the division:
- 124 (A) grants the employee access to the database; and
- 125 (B) provides the employee with a password that is unique to that employee to access
126 the database in order to permit the division to comply with the requirements of Subsection
127 [58-37f-203\(5\)](#) with respect to the employee;
- 128 (h) an employee of the same business that employs a licensed practitioner under
129 Subsection (2)(f) if:
- 130 (i) the employee is designated by the practitioner as an individual authorized to access
131 the information on behalf of the practitioner;
- 132 (ii) the practitioner and the employing business provide written notice to the division of
133 the identity of the designated employee; and
- 134 (iii) the division:
- 135 (A) grants the employee access to the database; and
- 136 (B) provides the employee with a password that is unique to that employee to access
137 the database in order to permit the division to comply with the requirements of Subsection
138 [58-37f-203\(5\)](#) with respect to the employee;
- 139 (i) a licensed pharmacist having authority to dispense a controlled substance to the
140 extent the information is provided or sought for the purpose of:
- 141 (i) dispensing or considering dispensing any controlled substance; or
- 142 (ii) determining whether a person:
- 143 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
- 144 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
145 substance from the pharmacist;
- 146 (j) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy
147 intern who is an employee of a pharmacy as defined in Section [58-17b-102](#), for the purposes
148 described in Subsection (2)(h)(i) or (ii), if:
- 149 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
150 to access the information on behalf of a licensed pharmacist employed by the pharmacy;
- 151 (ii) the pharmacist-in-charge provides written notice to the division of the identity of

152 the employee; and

153 (iii) the division:

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

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

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

157 [58-37f-203\(5\)](#) with respect to the employee;

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

159 agencies and state and local prosecutors that are engaged in an investigation related to:

160 (i) one or more controlled substances; and

161 (ii) a specific person who is a subject of the investigation;

162 (l) employees of the Office of Internal Audit and Program Integrity within the

163 Department of Health who are engaged in their specified duty of ensuring Medicaid program

164 integrity under Section [26-18-2.3](#);

165 (m) a mental health therapist, if:

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

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

168 (B) receiving treatment from, or under the direction of, the mental health therapist as

169 part of the patient's participation in the licensed substance abuse treatment program described

170 in Subsection (2)(m)(i)(A);

171 (ii) the information is sought for the purpose of determining whether the patient is

172 using a controlled substance while the patient is enrolled in the licensed substance abuse

173 treatment program described in Subsection (2)(m)(i)(A); and

174 (iii) the licensed substance abuse treatment program described in Subsection

175 (2)(m)(i)(A) is associated with a practitioner who:

176 (A) is a physician, a physician assistant, an advance practice registered nurse, or a

177 pharmacist; and

178 (B) is available to consult with the mental health therapist regarding the information

179 obtained by the mental health therapist, under this Subsection (2)(m), from the database;

180 (n) an individual who is the recipient of a controlled substance prescription entered into

181 the database, upon providing evidence satisfactory to the division that the individual requesting

182 the information is in fact the individual about whom the data entry was made;

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

187 (p) the inspector general, or a designee of the inspector general, of the Office of
188 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
189 Title 63A, Chapter 13, Part 2, Office and Powers; and

190 (q) the following licensed physicians for the purpose of reviewing and offering an
191 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
192 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

196 (iii) a physician offering a second opinion regarding treatment.

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

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

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

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

205 [and]

206 (ii) establish the information to be provided by an emergency room employee under
207 Subsection (4)[-]; and

208 (iii) facilitate providing controlled substance prescription information to a third party
209 under Subsection (5).

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

213 (4) (a) An individual who is employed in the emergency room of a hospital may

214 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
215 the individual is designated under Subsection (4)(c) and the licensed practitioner:

216 (i) is employed in the emergency room;
217 (ii) is treating an emergency room patient for an emergency medical condition; and
218 (iii) requests that an individual employed in the emergency room and designated under
219 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
220 course of treatment.

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

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

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

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

231 (iii) the division:

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

233 (B) provides the employee with a password that is unique to that employee to access
234 the database in order to permit the division to comply with the requirements of Subsection
235 [58-37f-203\(5\)](#) with respect to the employee.

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

240 (5) (a) An individual may request that the division send the information under
241 Subsection (5)(b) to a third party who is designated by the individual each time a controlled
242 substance prescription for the individual is dispensed.

243 (b) The information the division shall provide under Subsection (5)(a) is:

244 (i) the fact a controlled substance has been dispensed to the individual, but without

245 identifying the controlled substance; and

246 (ii) the date the controlled substance was dispensed.

247 [~~5~~] (6) (a) An individual who is granted access to the database based on the fact that
248 the individual is a licensed practitioner or a mental health therapist shall be denied access to the
249 database when the individual is no longer licensed.

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

Legislative Review Note
Office of Legislative Research and General Counsel