

1 **CONTROLLED SUBSTANCE DATABASE MODIFICATIONS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Controlled Substance Database Act regarding access.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ allows probation and parole officers to obtain information in the controlled
13 substance database without a warrant.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **58-37f-301**, as last amended by Laws of Utah 2015, Chapters 89, 326, and 336

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

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

24 **58-37f-301. Access to database.**

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

27 (a) effectively enforce the limitations on access to the database as described in this



28 part; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65 Health; and

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

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

68 who is not directly involved in the scientific studies;

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

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

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

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

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

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

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

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

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

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

79 and

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

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

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

83 obtaining or providing a controlled substance;

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

85 extent the information:

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

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

88 (I) prescribing or considering prescribing any controlled substance to the current or

89 prospective patient;

- 90 (II) diagnosing the current or prospective patient;
- 91 (III) providing medical treatment or medical advice to the current or prospective
- 92 patient; or
- 93 (IV) determining whether the current or prospective patient:
- 94 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;
- 95 or
- 96 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
- 97 substance from the practitioner;
- 98 (ii) (A) relates specifically to a former patient of the practitioner; and
- 99 (B) is provided to or sought by the practitioner for the purpose of determining whether
- 100 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
- 101 controlled substance from the practitioner;
- 102 (iii) relates specifically to an individual who has access to the practitioner's Drug
- 103 Enforcement Administration identification number, and the practitioner suspects that the
- 104 individual may have used the practitioner's Drug Enforcement Administration identification
- 105 number to fraudulently acquire or prescribe a controlled substance;
- 106 (iv) relates to the practitioner's own prescribing practices, except when specifically
- 107 prohibited by the division by administrative rule;
- 108 (v) relates to the use of the controlled substance database by an employee of the
- 109 practitioner, described in Subsection (2)(g); or
- 110 (vi) relates to any use of the practitioner's Drug Enforcement Administration
- 111 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
- 112 controlled substance;
- 113 (g) in accordance with Subsection (3)(a), an employee of a practitioner described in
- 114 Subsection (2)(f), for a purpose described in Subsection (2)(f)(i) or (ii), if:
- 115 (i) the employee is designated by the practitioner as an individual authorized to access
- 116 the information on behalf of the practitioner;
- 117 (ii) the practitioner provides written notice to the division of the identity of the
- 118 employee; and
- 119 (iii) the division:
- 120 (A) grants the employee access to the database; and

121 (B) provides the employee with a password that is unique to that employee to access
122 the database in order to permit the division to comply with the requirements of Subsection
123 58-37f-203(5) with respect to the employee;

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

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

128 (ii) the practitioner and the employing business provide written notice to the division of
129 the identity of the designated employee; and

130 (iii) the division:

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

132 (B) provides the employee with a password that is unique to that employee to access
133 the database in order to permit the division to comply with the requirements of Subsection
134 58-37f-203(5) with respect to the employee;

135 (i) a licensed pharmacist having authority to dispense a controlled substance to the
136 extent the information is provided or sought for the purpose of:

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

138 (ii) determining whether a person:

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

140 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
141 substance from the pharmacist;

142 (j) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy
143 intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the purposes
144 described in Subsection (2)(h)(i) or (ii), if:

145 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
146 to access the information on behalf of a licensed pharmacist employed by the pharmacy;

147 (ii) the pharmacist-in-charge provides written notice to the division of the identity of
148 the employee; and

149 (iii) the division:

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

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

152 the database in order to permit the division to comply with the requirements of Subsection
153 58-37f-203(5) with respect to the employee;

154 (k) pursuant to a valid search warrant, federal, state, and local law enforcement
155 [~~agencies~~] officers and state and local prosecutors [~~that~~] who are engaged in an investigation
156 related to:

157 (i) one or more controlled substances; and

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

159 (l) a probation or parole officer employed by the Department of Corrections or by a
160 political subdivision is not required to obtain a search warrant to gain access to database
161 information necessary for the officer's supervision of a specific probationer or parolee who is
162 under the officer's direct supervision;

163 [~~(+)~~] (m) employees of the Office of Internal Audit and Program Integrity within the
164 Department of Health who are engaged in their specified duty of ensuring Medicaid program
165 integrity under Section 26-18-2.3;

166 [~~(m)~~] (n) a mental health therapist, if:

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

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

169 (B) receiving treatment from, or under the direction of, the mental health therapist as
170 part of the patient's participation in the licensed substance abuse treatment program described
171 in Subsection (2)[~~(m)~~](n)(i)(A);

172 (ii) the information is sought for the purpose of determining whether the patient is
173 using a controlled substance while the patient is enrolled in the licensed substance abuse
174 treatment program described in Subsection (2)[~~(m)~~](n)(i)(A); and

175 (iii) the licensed substance abuse treatment program described in Subsection
176 (2)[~~(m)~~](n)(i)(A) is associated with a practitioner who:

177 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
178 pharmacist; and

179 (B) is available to consult with the mental health therapist regarding the information
180 obtained by the mental health therapist, under this Subsection (2)[~~(m)~~](n), from the database;

181 [~~(m)~~] (o) an individual who is the recipient of a controlled substance prescription
182 entered into the database, upon providing evidence satisfactory to the division that the

183 individual requesting the information is in fact the individual about whom the data entry was
184 made;

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

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

192 ~~[(q)]~~ (r) the following licensed physicians for the purpose of reviewing and offering an
193 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
194 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

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

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

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

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

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

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

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 who is granted access to the database based on the fact that the
241 individual is a licensed practitioner or a mental health therapist shall be denied access to the
242 database when the individual is no longer licensed.

243 (b) An individual who is granted access to the database based on the fact that the
244 individual is a designated employee of a licensed practitioner shall be denied access to the

245 database when the practitioner is no longer licensed.

Legislative Review Note
Office of Legislative Research and General Counsel