

1 **CONTROLLED SUBSTANCE DATABASE MODIFICATIONS**

2 2016 THIRD SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Daniel McCay

6

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses access provisions of the Controlled Substance Database Act.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ describes the circumstances under which probation and parole officers may access
13 information from the controlled substance database without a warrant.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 This bill provides a special effective date.

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **58-37f-301 (Effective 10/31/16)**, as last amended by Laws of Utah 2016, Chapters 104,
21 197, and 238

22

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

24 Section 1. Section **58-37f-301 (Effective 10/31/16)** is amended to read:

25 **58-37f-301 (Effective 10/31/16). Access to database.**

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



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

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

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

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

38 (ii) the following law enforcement officers, but the division may only provide
39 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding
40 individuals for whom a controlled substance has been prescribed or to whom a controlled
41 substance has been dispensed:

42 (A) a law enforcement agency officer who is engaged in a joint investigation with the
43 division; and

44 (B) a law enforcement agency officer to whom the division has referred a suspected
45 criminal violation of controlled substance laws;

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

49 (c) a board member if:

50 (i) the board member is assigned to monitor a licensee on probation; and

51 (ii) the board member is limited to obtaining information from the database regarding
52 the specific licensee on probation;

53 (d) a member of a diversion committee established in accordance with Subsection
54 58-1-404(2) if:

55 (i) the diversion committee member is limited to obtaining information from the
56 database regarding the person whose conduct is the subject of the committee's consideration;
57 and

58 (ii) the conduct that is the subject of the committee's consideration includes a violation

59 or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant
60 violation or potential violation under this title;

61 (e) in accordance with a written agreement entered into with the department,
62 employees of the Department of Health:

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

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

70 (iii) in the medical examiner's office;

71 (f) in accordance with a written agreement entered into with the department, a designee
72 of the director of the Department of Health, who is not an employee of the Department of
73 Health, whom the director of the Department of Health assigns to conduct scientific studies
74 regarding the use or abuse of controlled substances pursuant to an application process
75 established in rule by the Department of Health, if:

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

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

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

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

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

83 (D) are conducted in a research facility, as defined by division rule, that is associated
84 with a university or college accredited by one or more regional or national accrediting agencies
85 recognized by the United States Department of Education;

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

88 (iv) the identity of the prescribers, patients, and pharmacies in the database are
89 de-identified, confidential, not disclosed in any manner to the designee or to any individual

90 who is not directly involved in the scientific studies;

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

94 (i) the managed care organization contracts with the Department of Health under the
95 provisions of Section 26-18-405 and the contract includes provisions that:

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

98 (B) limit the authorized employee of the managed care organization to requesting either
99 the division or the Department of Health to conduct a search of the database regarding a
100 specific Medicaid enrollee and to report the results of the search to the authorized employee;
101 and

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

106 (h) a licensed practitioner having authority to prescribe controlled substances, to the
107 extent the information:

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

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

110 (I) prescribing or considering prescribing any controlled substance to the current or
111 prospective patient;

112 (II) diagnosing the current or prospective patient;

113 (III) providing medical treatment or medical advice to the current or prospective
114 patient; or

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

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

117 or

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

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

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

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

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

130 (v) relates to the use of the controlled substance database by an employee of the
131 practitioner, described in Subsection (2)(i); or

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

135 (i) in accordance with Subsection (3)(a), an employee of a practitioner described in
136 Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

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

139 (ii) the practitioner provides written notice to the division of the identity of the
140 employee; and

141 (iii) the division:

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

143 (B) provides the employee with a password that is unique to that employee to access
144 the database in order to permit the division to comply with the requirements of Subsection
145 [58-37f-203\(5\)](#) with respect to the employee;

146 (j) an employee of the same business that employs a licensed practitioner under
147 Subsection (2)(h) if:

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

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

152 (iii) the division:
153 (A) grants the employee access to the database; and
154 (B) provides the employee with a password that is unique to that employee to access
155 the database in order to permit the division to comply with the requirements of Subsection
156 58-37f-203(5) with respect to the employee;

157 (k) a licensed pharmacist having authority to dispense a controlled substance to the
158 extent the information is provided or sought for the purpose of:
159 (i) dispensing or considering dispensing any controlled substance; or
160 (ii) determining whether a person:
161 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
162 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
163 substance from the pharmacist;

164 (l) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy
165 intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the purposes
166 described in Subsection (2)(j)(i) or (ii), if:
167 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
168 to access the information on behalf of a licensed pharmacist employed by the pharmacy;
169 (ii) the pharmacist-in-charge provides written notice to the division of the identity of
170 the employee; and
171 (iii) the division:
172 (A) grants the employee access to the database; and
173 (B) provides the employee with a password that is unique to that employee to access
174 the database in order to permit the division to comply with the requirements of Subsection
175 58-37f-203(5) with respect to the employee;

176 (m) pursuant to a valid search warrant, federal, state, and local law enforcement
177 officers and state and local prosecutors who are engaged in an investigation related to:
178 (i) one or more controlled substances; and
179 (ii) a specific person who is a subject of the investigation;

180 (n) subject to Subsection (7), a probation or parole officer, employed by the
181 Department of Corrections or by a political subdivision [~~who is not required to obtain a search~~
182 ~~warrant~~], to gain access to database information necessary for the officer's supervision of a

183 specific probationer or parolee who is under the officer's direct supervision;

184 (o) employees of the Office of Internal Audit and Program Integrity within the
185 Department of Health who are engaged in their specified duty of ensuring Medicaid program
186 integrity under Section 26-18-2.3;

187 (p) a mental health therapist, if:

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

189 (A) enrolled in a licensed substance abuse treatment program; and
190 (B) receiving treatment from, or under the direction of, the mental health therapist as
191 part of the patient's participation in the licensed substance abuse treatment program described
192 in Subsection (2)(p)(i)(A);

193 (ii) the information is sought for the purpose of determining whether the patient is
194 using a controlled substance while the patient is enrolled in the licensed substance abuse
195 treatment program described in Subsection (2)(p)(i)(A); and

196 (iii) the licensed substance abuse treatment program described in Subsection
197 (2)(p)(i)(A) is associated with a practitioner who:

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

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

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

205 (r) an individual under Subsection (2)(q) for the purpose of obtaining a list of the
206 persons and entities that have requested or received any information from the database
207 regarding the individual, except if the individual's record is subject to a pending or current
208 investigation as authorized under this Subsection (2);

209 (s) the inspector general, or a designee of the inspector general, of the Office of
210 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
211 Title 63A, Chapter 13, Part 2, Office and Powers; and

212 (t) the following licensed physicians for the purpose of reviewing and offering an
213 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter

214 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

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

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

221 (ii) A pharmacist described in Subsection (2)(k) who is a pharmacist-in-charge may
222 designate up to five employees to access information from the database under Subsection (2)(l).

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

225 (i) establish background check procedures to determine whether an employee
226 designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database;
227 and

228 (ii) establish the information to be provided by an emergency room employee under
229 Subsection (4); and

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

232 (c) The division shall grant an employee designated under Subsection (2)(i), (2)(j), or
233 (4)(c) access to the database, unless the division determines, based on a background check, that
234 the employee poses a security risk to the information contained in the database.

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

238 (i) is employed in the emergency room;

239 (ii) is treating an emergency room patient for an emergency medical condition; and

240 (iii) requests that an individual employed in the emergency room and designated under
241 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
242 course of treatment.

243 (b) The emergency room employee obtaining information from the database shall,
244 when gaining access to the database, provide to the database the name and any additional

245 identifiers regarding the requesting practitioner as required by division administrative rule
246 established under Subsection (3)(b).

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

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

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

253 (iii) the division:

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

255 (B) provides the employee with a password that is unique to that employee to access
256 the database in order to permit the division to comply with the requirements of Subsection
257 [58-37f-203\(5\)](#) with respect to the employee.

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

262 (5) (a) (i) An individual may request that the division provide the information under
263 Subsection (5)(b) to a third party who is designated by the individual each time a controlled
264 substance prescription for the individual is dispensed.

265 (ii) The division shall upon receipt of the request under this Subsection (5)(a) advise
266 the individual in writing that the individual may direct the division to discontinue providing the
267 information to a third party and that notice of the individual's direction to discontinue will be
268 provided to the third party.

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

270 (i) the fact a controlled substance has been dispensed to the individual, but without
271 identifying the controlled substance; and

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

273 (c) (i) An individual who has made a request under Subsection (5)(a) may direct that
274 the division discontinue providing information to the third party.

275 (ii) The division shall:

276 (A) notify the third party that the individual has directed the division to no longer
277 provide information to the third party; and

278 (B) discontinue providing information to the third party.

279 (6) (a) An individual who is granted access to the database based on the fact that the
280 individual is a licensed practitioner or a mental health therapist shall be denied access to the
281 database when the individual is no longer licensed.

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

285 (7) A probation or parole officer is not required to obtain a search warrant to access the
286 database in accordance with Subsection (2)(n).

287 Section 2. **Effective date.**

288 This bill takes effect on October 31, 2016.

Legislative Review Note
Office of Legislative Research and General Counsel