Representative Stewart E. Barlow proposes the following substitute bill:

**OPIOID PRESCRIBING REGULATIONS**

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: _____________

LONG TITLE

General Description:

This bill amends the Division of Occupational and Professional Licensing Act related to the prescribing of certain controlled substances.

Highlighted Provisions:

This bill:

- limits the number of days for which an opiate may be prescribed for certain individuals;
- removes an outdated provision from the Utah Controlled Substances Act related to opiate prescribing; and
- amends the authority of a prescriber to designate an employee who may access the database.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37-6, as last amended by Laws of Utah 2014, Chapter 78
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 58-37-6 is amended to read:

58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.

(1) (a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63J-1-504.

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules I through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules I through V within this state shall obtain a license issued by the division.

(ii) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules I through V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II through V under this section:

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
usual course of the person's business or employment; however, nothing in this subsection shall
be interpreted to permit an agent, employee, sales representative, or detail man to maintain an
inventory of controlled substances separate from the location of the person's employer's
registered and licensed place of business;
(ii) a motor carrier or warehouseman, or an employee of a motor carrier or
warehouseman, who possesses any controlled substance in the usual course of the person's
business or employment; and
(iii) an ultimate user, or any person who possesses any controlled substance pursuant to
a lawful order of a practitioner.
(d) The division may enact rules waiving the license requirement for certain
manufacturers, producers, distributors, prescribers, dispensers, administrators, research
practitioners, or laboratories performing analysis if consistent with the public health and safety.
(e) A separate license is required at each principal place of business or professional
practice where the applicant manufactures, produces, distributes, dispenses, conducts research
with, or performs laboratory analysis upon controlled substances.
(f) The division may enact rules providing for the inspection of a licensee or applicant's
establishment, and may inspect the establishment according to those rules.
(3) (a) (i) Upon proper application, the division shall license a qualified applicant to
manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
controlled substances included in Schedules I through V, unless it determines that issuance of a
license is inconsistent with the public interest.
(ii) The division may not issue a license to any person to prescribe, dispense, or
administer a Schedule I controlled substance except under Subsection (3)(a)(i).
(iii) In determining public interest under this Subsection (3)(a), the division shall
consider whether or not the applicant has:
(A) maintained effective controls against diversion of controlled substances and any
Schedule I or II substance compounded from any controlled substance into other than
legitimate medical, scientific, or industrial channels;
(B) complied with applicable state and local law;
(C) been convicted under federal or state laws relating to the manufacture, distribution,
or dispensing of substances;
(D) past experience in the manufacture of controlled dangerous substances;
(E) established effective controls against diversion; and
(F) complied with any other factors that the division establishes that promote the public
health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
produce, distribute, conduct research with, or perform laboratory analysis upon controlled
substances in Schedule I other than those specified in the license.

(c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
substances in Schedules II through V if they are authorized to administer, dispense, or conduct
research under the laws of this state.

(ii) The division need not require a separate license for practitioners engaging in
research with nonnarcotic controlled substances in Schedules II through V where the licensee is
already licensed under this chapter in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or
where the division by rule requires a separate license for research of nonnarcotic substances
in Schedules II through V, a practitioner shall apply to the division prior to conducting
research.

(iv) Licensing for purposes of bona fide research with controlled substances by a
practitioner considered qualified may be denied only on a ground specified in Subsection (4),
or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard
adequately the practitioner's supply of substances against diversion from medical or scientific
use.

(v) Practitioners registered under federal law to conduct research in Schedule I
substances may conduct research in Schedule I substances within this state upon furnishing the
division evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of
federal law respecting registration, excluding fees, entitles them to be licensed under this
chapter.

(e) The division shall initially license those persons who own or operate an
establishment engaged in the manufacture, production, distribution, dispensation, or
administration of controlled substances prior to April 3, 1980, and who are licensed by the
(4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the division upon finding that the applicant or licensee has:

(i) materially falsified any application filed or required pursuant to this chapter;

(ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;

(iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;

(iv) had a federal registration or license denied, suspended, or revoked by competent federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense controlled substances;

(v) had the licensee's license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;

(vi) violated any division rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;

(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or

(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:

(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of the practitioner's professional practice; or

(B) improve performance in any form of human exercise, sport, or game.

(b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.

(d) (i) The division may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.

(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the division or dissolved by a court of competent jurisdiction.

(e) (i) If a license is suspended or revoked under this Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the division.

(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.

(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The division shall notify promptly the Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.

(g) If an individual's Drug Enforcement Administration registration is denied, revoked, surrendered, or suspended, the division shall immediately suspend the individual's controlled substance license, which shall only be reinstated by the division upon reinstatement of the federal registration, unless the division has taken further administrative action under Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled substance license.

(5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the division.

(b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or
professionally used by him otherwise than by a prescription.

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if the person keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with division rules or a lawful order under the rules and regulations of the United States.

(7) (a) A person may not write or authorize a prescription for a controlled substance unless the person is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) A person other than a pharmacist licensed under the laws of this state, or the pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

(c) (i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the division and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the division, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule, and contains the following information:

(i) the name, address, and registry number of the prescriber;
(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(i) the person who writes the prescription is licensed under Subsection (2); and

(ii) the prescribed controlled substance is to be used in research.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the restrictions of this Subsection (7)(f). {[following] of this Subsection (7)(f). [following] of this Subsection (7)(f).}

(i) {[A]} A prescription for a Schedule II substance may not be refilled.

{[B]} (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II or Schedule III controlled substance that is an opiate and that is issued for an acute condition shall be completely or partially filled in a quantity not to exceed a 7 day supply as directed on the daily dosage rate of the prescription.

(B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when the practitioner has determined that a quantity exceeding 7 days is needed, in which case the practitioner may prescribe up to a thirty day supply, with a partial fill at the discretion of the practitioner.

(C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or chronic conditions which are documented as being complex or chronic in the medical record.

(D) A pharmacist is not required to verify that a prescription is in compliance with Subsection (7)(f)(iii).

(iv) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(v) All other controlled substances in Schedule V may be refilled as the
prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

[(iv)] (vi) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.

[(v)] (vii) A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:

(A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;

(B) no one prescription may exceed a 30-day supply; and

(C) a second or third prescription shall include the date of issuance and the date for dispensing; and

(D) unless the practitioner determines there is a valid medical reason to the contrary, the date for dispensing a second or third prescription may not be fewer than 30 days from the dispensing date of the previous prescription.

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this Subsection (7) if the order is:

(i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);

(ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;

(iii) entered upon the record of the patient, the record is signed by the prescriber affirming the prescriber's authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient.
274 authorized to receive it.
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276 (h) A practitioner licensed under this chapter may not prescribe, administer, or
dispense a controlled substance to a child, without first obtaining the consent required in
Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except
in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same
meaning as defined in Section 78A-6-105, and "emergency" means any physical condition
requiring the administration of a controlled substance for immediate relief of pain or suffering.

278 (i) A practitioner licensed under this chapter may not prescribe or administer dosages
of a controlled substance in excess of medically recognized quantities necessary to treat the
ailment, malady, or condition of the ultimate user.

280 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense
any controlled substance to another person knowing that the other person is using a false name,
address, or other personal information for the purpose of securing the controlled substance.

282 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense
a controlled substance may not manufacture, distribute, or dispense a controlled substance to
another licensee or any other authorized person not authorized by this license.

284 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a
symbol required by this chapter or by a rule issued under this chapter.

286 (m) A person licensed under this chapter may not refuse or fail to make, keep, or
furnish any record notification, order form, statement, invoice, or information required under
this chapter.

288 (n) A person licensed under this chapter may not refuse entry into any premises for
inspection as authorized by this chapter.

290 (o) A person licensed under this chapter may not furnish false or fraudulent material
information in any application, report, or other document required to be kept by this chapter or
willfully make any false statement in any prescription, order, report, or record required by this
chapter.

292 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to
a penalty not to exceed $5,000. The division shall determine the procedure for adjudication of
any violations in accordance with Sections 58-1-106 and 58-1-108.
(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j) or Subsection (10) is:

(i) upon first conviction, guilty of a class B misdemeanor;

(ii) upon second conviction, guilty of a class A misdemeanor; and

(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through (o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

(10) A person holding a valid license under this chapter who is engaged in medical research may produce, possess, administer, prescribe, or dispense a controlled substance for research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense a controlled substance listed in Section 58-37-4.2.

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


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

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

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

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

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

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

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

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

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

(c) a board member if:

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

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

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

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

(ii) the conduct that is the subject of the committee's consideration includes a violation or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant violation or potential violation under this title;

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

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

(ii) when the information is requested by the Department of Health in relation to a person or provider whom the Department of Health suspects may be improperly obtaining or providing a controlled substance; or
(iii) in the medical examiner's office;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) diagnosing the current or prospective patient;

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

(IV) determining whether the current or prospective patient:

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

or

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

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

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

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

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

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(i); or
(vi) relates to any use of the practitioner's Drug Enforcement Administration
identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
controlled substance;

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

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

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

(iii) the division:

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

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

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

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

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

(iii) the division:

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

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

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

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

(ii) determining whether a person:

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

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

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

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

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

(iii) the division:

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

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

(m) pursuant to a valid search warrant, federal, state, and local law enforcement officers and state and local prosecutors who are engaged in an investigation related to:

(i) one or more controlled substances; and

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

(n) subject to Subsection (7), a probation or parole officer, employed by the Department of Corrections or by a political subdivision, to gain access to database information necessary for the officer's supervision of a specific probationer or parolee who is under the officer's direct supervision;

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

(p) a mental health therapist, if:

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

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

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

(ii) the information is sought for the purpose of determining whether the patient is
using a controlled substance while the patient is enrolled in the licensed substance abuse
492 treatment program described in Subsection (2)(p)(i)(A); and
493 (iii) the licensed substance abuse treatment program described in Subsection
494 (2)(p)(i)(A) is associated with a practitioner who:
495 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
496 pharmacist; and
497 (B) is available to consult with the mental health therapist regarding the information
498 obtained by the mental health therapist, under this Subsection (2)(p), from the database;
499 (q) an individual who is the recipient of a controlled substance prescription entered into
500 the database, upon providing evidence satisfactory to the division that the individual requesting
501 the information is in fact the individual about whom the data entry was made;
502 (r) an individual under Subsection (2)(q) for the purpose of obtaining a list of the
503 persons and entities that have requested or received any information from the database
504 regarding the individual, except if the individual's record is subject to a pending or current
505 investigation as authorized under this Subsection (2);
506 (s) the inspector general, or a designee of the inspector general, of the Office of
507 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
508 Title 63A, Chapter 13, Part 2, Office and Powers; and
509 (t) the following licensed physicians for the purpose of reviewing and offering an
510 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
511 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:
512 (i) a member of the medical panel described in Section 34A-2-601;
513 (ii) a physician employed as medical director for a licensed workers' compensation
514 insurer or an approved self-insured employer; or
515 (iii) a physician offering a second opinion regarding treatment.
516 (3) (a) (i) A practitioner described in Subsection (2)(h) may designate [up to three] one
517 or more employees to access information from the database under Subsection (2)(i), (2)(j), or
518 (4)(c).
519 (ii) A pharmacist described in Subsection (2)(k) who is a pharmacist-in-charge may
520 designate up to five employees to access information from the database under Subsection (2)(l).
521 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
Administrative Rulemaking Act, to:

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

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

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

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

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

(i) is employed in the emergency [room] department;

(ii) is treating an emergency [room] department patient for an emergency medical condition; and

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

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

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

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

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

(iii) the division:
(A) grants the employee access to the database; and

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

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

58-37f-203(5) with respect to the employee.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a

practitioner who designates an employee under Subsection (2)(i), (2)(j), or (4)(c) to pay for the

costs incurred by the division to conduct the background check and make the determination

described in Subsection (3)(b).

(5) (a) (i) An individual may request that the division provide the information under

Subsection (5)(b) to a third party who is designated by the individual each time a controlled

substance prescription for the individual is dispensed.

(ii) The division shall upon receipt of the request under this Subsection (5)(a) advise

the individual in writing that the individual may direct the division to discontinue providing the

information to a third party and that notice of the individual's direction to discontinue will be

provided to the third party.

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

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

identifying the controlled substance; and

(ii) the date the controlled substance was dispensed.

(c) (i) An individual who has made a request under Subsection (5)(a) may direct that

the division discontinue providing information to the third party.

(ii) The division shall:

(A) notify the third party that the individual has directed the division to no longer

provide information to the third party; and

(B) discontinue providing information to the third party.

(6) (a) An individual who is granted access to the database based on the fact that the

individual is a licensed practitioner or a mental health therapist shall be denied access to the

database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the

individual is a designated employee of a licensed practitioner shall be denied access to the

database when the practitioner is no longer licensed.
A probation or parole officer is not required to obtain a search warrant to access the database in accordance with Subsection (2)(n).

The division shall review and adjust the database programing which automatically logs off an individual who is granted access to the database under Subsections (2)(h), (2)(i), (2)(j), and (4)(c) to maximize the following objectives:

(a) to protect patient privacy;

(b) to reduce inappropriate access; and

(c) to make the database more useful and helpful to a person accessing the database under Subsections (2)(h), (2)(i), (2)(j), and (4)(c), especially in high usage locations such as an emergency department.