

Representative Raymond P. Ward proposes the following substitute bill:

PROFESSIONAL LICENSING REVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions of the Controlled Substance Database Act.

Highlighted Provisions:

This bill:

- ▶ modifies access to the controlled substance database for certain law enforcement officers;
- ▶ modifies the authority of the Division of Occupational and Professional Licensing (DOPL) to review the controlled substance database to identify any prescriber who may be overprescribing opioids;
- ▶ grants DOPL the authority to provide education or training to certain prescribers and to take other enforcement action; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **58-37f-301**, as last amended by Laws of Utah 2017, Chapter 237

27 **58-37f-304**, as last amended by Laws of Utah 2017, Chapters 181 and 237

28

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

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

31 **58-37f-301. Access to database.**

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

34 (a) administer the provisions of this part;

35 ~~[(a)]~~ (b) effectively enforce the limitations on access to the database as described in
36 this part; and

37 ~~[(b)]~~ (c) establish standards and procedures to ensure accurate identification of
38 individuals requesting information or receiving information without request from the database.

39 (2) The division shall make information in the database and information obtained from
40 other state or federal prescription monitoring programs by means of the database available only
41 to the following individuals, in accordance with the requirements of this chapter and division
42 rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

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

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

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

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

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

56 (c) a board member if:

57 (i) the board member is assigned to monitor a licensee on probation; and
58 (ii) the board member is limited to obtaining information from the database regarding
59 the specific licensee on probation;

60 (d) a member of a diversion committee established in accordance with Subsection
61 58-1-404(2) if:

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (D) are conducted in a research facility, as defined by division rule, that is associated
91 with a university or college accredited by one or more regional or national accrediting agencies

92 recognized by the United States Department of Education;

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

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

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

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

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

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

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

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

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

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

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

- 119 (II) diagnosing the current or prospective patient;
- 120 (III) providing medical treatment or medical advice to the current or prospective
121 patient; or
- 122 (IV) determining whether the current or prospective patient:
- 123 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;
- 124 or
- 125 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
126 substance from the practitioner;
- 127 (ii) (A) relates specifically to a former patient of the practitioner; and
- 128 (B) is provided to or sought by the practitioner for the purpose of determining whether
129 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
130 controlled substance from the practitioner;
- 131 (iii) relates specifically to an individual who has access to the practitioner's Drug
132 Enforcement Administration identification number, and the practitioner suspects that the
133 individual may have used the practitioner's Drug Enforcement Administration identification
134 number to fraudulently acquire or prescribe a controlled substance;
- 135 (iv) relates to the practitioner's own prescribing practices, except when specifically
136 prohibited by the division by administrative rule;
- 137 (v) relates to the use of the controlled substance database by an employee of the
138 practitioner, described in Subsection (2)(i); or
- 139 (vi) relates to any use of the practitioner's Drug Enforcement Administration
140 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
141 controlled substance;
- 142 (i) in accordance with Subsection (3)(a), an employee of a practitioner described in
143 Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:
- 144 (i) the employee is designated by the practitioner as an individual authorized to access
145 the information on behalf of the practitioner;
- 146 (ii) the practitioner provides written notice to the division of the identity of the
147 employee; and
- 148 (iii) the division:
- 149 (A) grants the employee access to the database; and

150 (B) provides the employee with a password that is unique to that employee to access
151 the database in order to permit the division to comply with the requirements of Subsection
152 58-37f-203(5) with respect to the employee;

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

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

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

159 (iii) the division:

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

161 (B) provides the employee with a password that is unique to that employee to access
162 the database in order to permit the division to comply with the requirements of Subsection
163 58-37f-203(5) with respect to the employee;

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

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

167 (ii) determining whether a person:

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

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

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

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

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

178 (iii) the division:

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

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

181 the database in order to permit the division to comply with the requirements of Subsection
182 58-37f-203(5) with respect to the employee;

183 (m) a federal, state, or local law enforcement officer if:

184 (i) the officer receives information from the database from the division and does not
185 have direct access to the database;

186 (ii) the officer's law enforcement agency or department has entered into a
187 memorandum of understanding with the division that:

188 (A) is executed by the officer's chief, sheriff, or law enforcement chief executive
189 officer;

190 (B) notifies the agency or department that the division may audit at any time the
191 officer's and the agency's or department's use of information from the database; and

192 (C) allows the division to immediately suspend providing information from the
193 database to the law enforcement officer for any reason; and

194 (iii) the officer:

195 (A) submits to the division a written request from the agency or department on behalf
196 of the officer seeking information from the database that designates the officer as an
197 investigator assigned to investigate legally prescribed controlled substance cases;

197a **H→ (B) submits to the division a case number and a statement of reasonable suspicion that**
197b **a crime has been committed;**

198 ~~[(B)]~~ (C) ←H and the officer's supervisor successfully complete an eight-hour
198a prescription drug

199 investigator controlled substance database course established by the division by rule, which
200 includes an examination;

201 **H→ [(C)] (D) ←H** submits a security agreement application to the division in a form
201a established by

202 the division that requires state identification and has been reviewed and approved by the
203 database administrator or the administrator's designee; and

204 **H→ [(D)] (E) ←H** meets the requirements of any other rules made by the division
204a to establish the

205 requirements of this Subsection (2)(m);

206 ~~[(m)]~~ (n) pursuant to a valid search warrant, a federal, state, ~~[and]~~ or local law
207 enforcement ~~[officers and state and local prosecutors who are]~~ officer or a state or local
208 prosecutor who is engaged in an investigation related to:

209 (i) one or more controlled substances; and

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

211 ~~[(n)]~~ (o) subject to Subsection (7), a probation or parole officer, employed by the

212 Department of Corrections or by a political subdivision, to gain access to database information
213 necessary for the officer's supervision of a specific probationer or parolee who is under the
214 officer's direct supervision;

215 ~~[(p)] employees~~

216 (p) an employee of the Office of Internal Audit and Program Integrity within the
217 Department of Health who ~~[are]~~ is engaged in ~~[their]~~ the specified duty of ensuring Medicaid
218 program integrity under Section 26-18-2.3;

219 ~~[(p)]~~ (q) a mental health therapist, if:

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

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

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

225 (ii) the information is sought for the purpose of determining whether the patient is
226 using a controlled substance while the patient is enrolled in the licensed substance abuse
227 treatment program described in Subsection (2)~~[(p)]~~(q)(i)(A); and

228 (iii) the licensed substance abuse treatment program described in Subsection
229 (2)~~[(p)]~~(q)(i)(A) is associated with a practitioner who:

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

232 (B) is available to consult with the mental health therapist regarding the information
233 obtained by the mental health therapist, under this Subsection (2)~~[(p)]~~(q), from the database;

234 ~~[(q)]~~ (r) an individual who is the recipient of a controlled substance prescription
235 entered into the database, upon providing evidence satisfactory to the division that the
236 individual requesting the information is in fact the individual about whom the data entry was
237 made;

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

242 ~~[(s)]~~ (t) the inspector general, or a designee of the inspector general, of the Office of

243 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
244 Title 63A, Chapter 13, Part 2, Office and Powers; and

245 ~~(t)~~ (u) the following licensed physicians for the purpose of reviewing and offering an
246 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
247 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

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

252 (3) (a) (i) A practitioner described in Subsection (2)(h) may designate one or more
253 employees to access information from the database under Subsection (2)(i), (2)(j), or (4)(c).

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

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

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

261 (ii) establish the information to be provided by an emergency department employee
262 under Subsection (4); and

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

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

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

271 (i) is employed in the emergency department;

272 (ii) is treating an emergency department patient for an emergency medical condition;

273 and

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

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

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

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

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

287 (iii) the division:

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

289 (B) provides the employee with a password that is unique to that employee to access
290 the database in order to permit the division to comply with the requirements of Subsection
291 [58-37f-203\(5\)](#) with respect to the employee.

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

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

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

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

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

305 identifying the controlled substance; and

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

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

309 (ii) The division shall:

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

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

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

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

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

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

324 (a) to protect patient privacy;

325 (b) to reduce inappropriate access; and

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

329 Section 2. Section **58-37f-304** is amended to read:

330 **58-37f-304. Database utilization.**

331 (1) As used in this section:

332 (a) "Dispenser" means a licensed pharmacist, as described in Section [58-17b-303](#), or
333 the pharmacist's licensed intern, as described in Section [58-17b-304](#), who is also licensed to
334 dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

335 (b) "Outpatient" means a setting in which an individual visits a licensed healthcare

336 facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a
337 licensed healthcare facility for an overnight stay.

338 (c) "Prescriber" means an individual authorized to prescribe a controlled substance
339 under Title 58, Chapter 37, Utah Controlled Substances Act.

340 (d) "Schedule II opioid" means those substances listed in Subsection 58-37-4(2)(b)(i)
341 or (2)(b)(ii).

342 (e) "Schedule III opioid" means those substances listed in Subsection 58-37-4(2)(c)
343 that are opioids.

344 (2) (a) A prescriber shall substantially comply with this Subsection (2).

345 (b) Except as provided in Subsection (2)(b), a prescriber shall check the database for
346 information about a patient before the first time the prescriber gives a prescription to a patient
347 for a Schedule II opioid or a Schedule III opioid.

348 (c) A prescriber is not required to check the database under Subsection (2)(b) if:

349 (i) the prescription for a Schedule II opioid or a Schedule III opioid is for three days or
350 fewer on the daily dosage instructions on the prescription;

351 (ii) the prescriber has prior knowledge of the patient's prescription history based on the
352 prescriber's review of the patient's health record; or

353 (iii) the prescription for a Schedule II opioid or a Schedule III opioid is a post surgical
354 prescription and the total duration of opioid written after the surgery has been for 30 days or
355 fewer.

356 (d) If a prescriber is repeatedly prescribing a Schedule II opioid or Schedule III opioid
357 to a patient, the prescriber shall periodically review information about the patient in:

358 (i) the database; or

359 (ii) other similar records of controlled substances the patient has filled.

360 (e) A prescriber may assign the access and review required under Subsections (2)(b)
361 and (2)(c) to one or more employees in accordance with Subsections 58-37f-301(2)(i) and (j).

362 (f) The division shall not take action against the license of a prescriber for failure to
363 follow this Subsection (2) if the prescriber demonstrates substantial compliance with the
364 requirements of this Subsection (2).

365 (3) The division shall, in collaboration with the licensing boards for prescribers and
366 dispensers:

367 (a) develop a system that gathers and reports to prescribers and dispensers the progress
 368 and results of the prescriber's and dispenser's individual access and review of the database, as
 369 provided in this section; and

370 (b) reduce or waive the division's continuing education requirements regarding opioid
 371 prescriptions, described in Section [58-37-6.5](#), including the online tutorial and test relating to
 372 the database, for prescribers and dispensers whose individual utilization of the database, as
 373 determined by the division, demonstrates substantial compliance with this section.

374 (4) If the dispenser's access and review of the database suggest that the individual
 375 seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with
 376 generally recognized standards as provided in this section and Section [58-37f-201](#), the
 377 dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed,
 378 current, and professional decision regarding whether the prescribed opioid is medically
 379 justified, notwithstanding the results of the database search.

380 (5) (a) The division shall review the database to identify ~~it~~ **and investigate** any
 380a prescriber

381 who has a pattern of prescribing opioids not in accordance with the recommendations of:

382 (i) the CDC Guideline for Prescribing Opioids for Chronic Pain, published by the
 383 Centers for Disease Control and Prevention;

384 (ii) the Utah Clinical Guidelines on Prescribing Opioids for Treatment of Pain,
 385 published by the Utah Department of Health; or

386 (iii) other publications describing best practices related to prescribing opioids as
 387 identified by division rule in accordance with Title 63G, Chapter 3, Utah Administrative
 388 Rulemaking Act ~~it~~ **, and in consultation with the Physicians Licensing Board** .

389 (b) The division shall ~~it~~ **provide training or other** offer ~~it~~ education to a
 389a prescriber identified

390 under this Subsection (5) regarding best practices in the prescribing of opioids.

390a ~~it~~ **(c) A decision by a prescriber to accept or not accept the education offered by the**
 390b **division under this Subsection (5) is voluntary.**

390c **(d) The division may not use an identification the division has made under this**
 390d **Subsection (5) or the decision by a prescriber to accept or not accept education offered by the**
 390e **division under this Subsection (5) in a licensing investigation or action by the division.**

390f **(e) Any record created by the division as a result of this Subsection (5) is a protected**
 390g **record under Section 63G-2-305. ~~it~~**