

Representative Brad M. Daw proposes the following substitute bill:

CONTROLLED SUBSTANCE DATABASE REVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to the controlled substance database administered by the Division of Occupational and Professional Licensing (DOPL).

Highlighted Provisions:

This bill:

- ▶ modifies the requirements related to providing information to DOPL for inclusion in the controlled substance database;
- ▶ modifies who may be penalized for failing to submit information to the controlled substance database as required by state statute; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37f-203, as last amended by Laws of Utah 2015, Chapters 89 and 326

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



26 **58-37f-602**, as enacted by Laws of Utah 2010, Chapter 287

27

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

29 Section 1. Section **58-37f-203** is amended to read:

30 **58-37f-203. Submission, collection, and maintenance of data.**

31 (1) (a) The division shall implement on a statewide basis, including non-resident
32 pharmacies as defined in Section **58-17b-102**, the following two options for a pharmacist to
33 submit information:

34 (i) real-time submission of the information required to be submitted under this part to
35 the controlled substance database; and

36 (ii) 24-hour daily or next business day, whichever is later, batch submission of the
37 information required to be submitted under this part to the controlled substance database.

38 (b) (i) On and after January 1, 2016, a pharmacist shall comply with either:

39 (A) the submission time requirements established by the division under Subsection
40 (1)(a)(i); or

41 (B) the submission time requirements established by the division under Subsection
42 (1)(a)(ii).

43 (ii) Prior to January 1, 2016, a pharmacist may submit information using either option
44 under this Subsection (1).

45 (c) The division shall comply with Title 63G, Chapter 6a, Utah Procurement Code.

46 (2) (a) The ~~[pharmacist in charge]~~ pharmacist-in-charge and the pharmacist of the drug
47 outlet where a controlled substance is dispensed shall submit the data described in this section
48 to the division in accordance with:

49 (i) ~~[in accordance with]~~ the requirements of this section;

50 (ii) ~~[in accordance with]~~ the procedures established by the division; ~~[and]~~

51 (iii) additional types of information or data fields established by the division; and

52 ~~[(iii) in]~~ (iv) the format established by the division.

53 (b) A dispensing medical practitioner licensed under Chapter 17b, Part 8, Dispensing
54 Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, shall comply with
55 the provisions of this section and the dispensing medical practitioner shall assume the duties of
56 the pharmacist under this chapter.

57 (3) The ~~[pharmacist]~~ pharmacist-in-charge and the pharmacist described in Subsection
58 (2) shall, for each controlled substance dispensed by a pharmacist under the pharmacist's
59 supervision other than those dispensed for an inpatient at a health care facility, submit to the
60 division ~~[the following information:]~~ any type of information or data field established by the
61 division by rule in accordance with Subsection (6).

62 ~~[(a) the name of the prescribing practitioner;]~~

63 ~~[(b) the date of the prescription;]~~

64 ~~[(c) the date the prescription was filled;]~~

65 ~~[(d) the name of the individual for whom the prescription was written;]~~

66 ~~[(e) positive identification of the individual receiving the prescription, including the~~
67 ~~type of identification and any identifying numbers on the identification;]~~

68 ~~[(f) the name of the controlled substance;]~~

69 ~~[(g) the quantity of the controlled substance prescribed;]~~

70 ~~[(h) the strength of the controlled substance;]~~

71 ~~[(i) the quantity of the controlled substance dispensed;]~~

72 ~~[(j) the dosage quantity and frequency as prescribed;]~~

73 ~~[(k) the name of the drug outlet dispensing the controlled substance; and]~~

74 ~~[(l) the name of the pharmacist dispensing the controlled substance.]~~

75 (4) An individual whose records are in the database may obtain those records upon
76 submission of a written request to the division.

77 (5) (a) A patient whose record is in the database may contact the division in writing to
78 request correction of any of the patient's database information that is incorrect. The patient
79 shall provide a postal address for the division's response.

80 (b) The division shall grant or deny the request within 30 days from receipt of the
81 request and shall advise the requesting patient of its decision by mail postmarked within 35
82 days of receipt of the request.

83 (c) If the division denies a request under this Subsection (5) or does not respond within
84 35 days, the patient may submit an appeal to the Department of Commerce, within 60 days
85 after the postmark date of the patient's letter making a request for a correction under this
86 Subsection (5).

87 (6) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

88 Administrative Rulemaking Act, to establish submission requirements under this part[;
89 including the electronic format in which the information required under this section shall be
90 submitted to the division.], including:

- 91 (a) electronic format;
- 92 (b) submission procedures; and
- 93 (c) required information and data fields.

94 (7) The division shall ensure that the database system records and maintains for
95 reference:

- 96 (a) the identification of each individual who requests or receives information from the
97 database;
- 98 (b) the information provided to each individual; and
- 99 (c) the date and time that the information is requested or provided.

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

101 **58-37f-301. Access to database.**

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

- 104 (a) effectively enforce the limitations on access to the database as described in this
105 part; and
- 106 (b) establish standards and procedures to ensure accurate identification of individuals
107 requesting information or receiving information without request from the database.

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

- 112 (a) (i) personnel of the division specifically assigned to conduct investigations related
113 to controlled substance laws under the jurisdiction of the division; and
- 114 (ii) the following law enforcement officers, but the division may only provide
115 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding
116 individuals for whom a controlled substance has been prescribed or to whom a controlled
117 substance has been dispensed:

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

119 division; and

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

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

125 (c) a board member if:

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

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

129 (d) a member of a diversion committee established in accordance with Subsection
130 58-1-404(2) if:

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

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

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

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

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

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

147 (f) in accordance with a written agreement entered into with the department, a designee
148 of the director of the Department of Health, who is not an employee of the Department of
149 Health, whom the director of the Department of Health assigns to conduct scientific studies

150 regarding the use or abuse of controlled substances pursuant to an application process
151 established in rule by the Department of Health, if:

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

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

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

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

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

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

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

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

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

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

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

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

178 (ii) the information is requested by an authorized employee of the managed care
179 organization in relation to a person who is enrolled in the Medicaid program with the managed
180 care organization, and the managed care organization suspects the person may be improperly

181 obtaining or providing a controlled substance;

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

184 (i) (A) relates specifically to a current or prospective patient of the practitioner; and
185 (B) is provided to or sought by the practitioner for the purpose of:

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

188 (II) diagnosing the current or prospective patient;

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

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

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

193 or

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

196 (ii) (A) relates specifically to a former patient of the practitioner; and
197 (B) is provided to or sought by the practitioner for the purpose of determining whether
198 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
199 controlled substance from the practitioner;

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

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

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

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

211 (i) in accordance with Subsection (3)(a), an employee of a practitioner described in

212 Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

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

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

217 (iii) the division:

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

219 (B) provides the employee with a password that is unique to that employee to access
220 the database in order to permit the division to comply with the requirements of Subsection
221 58-37f-203(5) with respect to the employee;

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

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

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

228 (iii) the division:

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

230 (B) provides the employee with a password that is unique to that employee to access
231 the database in order to permit the division to comply with the requirements of Subsection
232 58-37f-203(5) with respect to the employee;

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

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

236 (ii) determining whether a person:

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

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

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

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

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

247 (iii) the division:

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

249 (B) provides the employee with a password that is unique to that employee to access
250 the database in order to permit the division to comply with the requirements of Subsection
251 [58-37f-203\(5\)](#) with respect to the employee;

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

254 (i) one or more controlled substances; and

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

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

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

263 (p) a mental health therapist, if:

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

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

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

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

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

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

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

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

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

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

288 (t) the following licensed physicians for the purpose of reviewing and offering an
289 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
290 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

294 (iii) a physician offering a second opinion regarding treatment[-]; and

295 (u) members of Utah's Opioid Fatality Review Committee, for the purpose of
296 reviewing a specific fatality due to opioid use and recommending policies to reduce the
297 frequency of opioid use fatalities.

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

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

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

304 (i) establish background check procedures to determine whether an employee

305 designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database;
306 and

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

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

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

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

317 (i) is employed in the emergency department;

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

319 and

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

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

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

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

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

333 (iii) the division:

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

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

336 the database in order to permit the division to comply with the requirements of Subsection
337 58-37f-203(5) with respect to the employee.

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

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

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

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

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

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

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

355 (ii) The division shall:

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

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

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

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

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

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

370 (a) to protect patient privacy;

371 (b) to reduce inappropriate access; and

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

375 Section 3. Section **58-37f-602** is amended to read:

376 **58-37f-602. Failure by pharmacist to submit information -- Penalties.**

377 (1) The failure of a [~~pharmacist in charge~~] pharmacist-in-charge, a pharmacy, or a third
378 party under contract with a pharmacist-in-charge to submit information to the database [~~as~~
379 ~~required under~~] in accordance with the requirements of Section **58-37f-203**, after the division
380 has submitted a specific written request for the information or when the division determines the
381 [~~individual~~] pharmacist-in-charge, pharmacy, or third party has a demonstrable pattern of
382 failing to submit the information as required, is grounds for the division to take the following
383 actions in accordance with Section **58-1-401**:

384 (a) refuse to issue a license to the [~~individual~~] pharmacist-in-charge or the pharmacy;

385 (b) refuse to renew the [~~individual's~~] license of the pharmacist-in-charge or the
386 pharmacy;

387 (c) revoke, suspend, restrict, or place on probation the license of the
388 pharmacist-in-charge or the pharmacy;

389 (d) issue a public reprimand to the [~~individual~~] pharmacist-in-charge or the pharmacy;

390 (e) issue a cease and desist order to the pharmacist-in-charge, the pharmacy, or the
391 third party; and

392 (f) impose a civil penalty on the pharmacist-in-charge, the pharmacy, or the third party
393 of [not more than] up to \$1,000 for each dispensed prescription regarding which the required
394 information is not submitted in accordance with the requirements of Section **58-37f-203**.

395 (2) Civil penalties assessed under Subsection (1)(f) shall be deposited in the General
396 Fund as a dedicated credit to be used by the division under Subsection **58-37f-502**(1).

397 (3) The procedure for determining a civil violation of this section shall be in

398 accordance with Section [58-1-108](#), regarding adjudicative proceedings within the division.