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

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

58-37f-301. Access to database.

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

(a) administer the provisions of this part;

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

~~[(b)]~~ (c) 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 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(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

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's law enforcement agency or department has entered into a memorandum
185 of understanding with the division that:
186 (A) is executed by the officer's chief, sheriff, or law enforcement chief executive
187 officer;
188 (B) notifies the agency or department that the division may audit the officer's and the
189 agency's or department's use of the database at any time; and
190 (C) allows the division to immediately suspend access to the database for any reason;
191 and
192 (ii) the officer:
193 (A) submits to the division a written request from the agency or department for the
194 officer's access to the database that designates the officer as an investigator primarily assigned
195 to investigate legally prescribed controlled substance cases;
196 (B) successfully completes an eight-hour prescription drug investigator controlled
197 substance database course established by the division by rule, which includes an examination;
198 (C) submits a security agreement application to the division in a form established by
199 the division that requires state identification and has been reviewed and approved by the
200 database administrator or the administrator's designee; and
201 (D) meets the requirements of any other rules made by the division to establish the
202 requirements of this Subsection (2)(m);
203 ~~[(m)]~~ (n) pursuant to a valid search warrant, a federal, state, ~~[and]~~ or local law
204 enforcement ~~[officers and state and local prosecutors who are]~~ officer or a state or local
205 prosecutor who is engaged in an investigation related to:
206 (i) one or more controlled substances; and
207 (ii) a specific person who is a subject of the investigation;
208 ~~[(n)]~~ (o) subject to Subsection (7), a probation or parole officer, employed by the
209 Department of Corrections or by a political subdivision, to gain access to database information
210 necessary for the officer's supervision of a specific probationer or parolee who is under the
211 officer's direct supervision;
212 ~~[(o) employees]~~
213 (p) an employee of the Office of Internal Audit and Program Integrity within the

214 Department of Health who ~~are~~ is engaged in ~~their~~ the specified duty of ensuring Medicaid
215 program integrity under Section 26-18-2.3;

216 ~~(p)~~ (q) a mental health therapist, if:

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

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

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

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

225 (iii) the licensed substance abuse treatment program described in Subsection

226 (2)~~(p)~~(q)(i)(A) is associated with a practitioner who:

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

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

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

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

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

242 ~~(t)~~ (u) the following licensed physicians for the purpose of reviewing and offering an
243 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
244 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

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

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

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

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

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

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

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

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

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

268 (i) is employed in the emergency department;

269 (ii) is treating an emergency department patient for an emergency medical condition;
270 and

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

274 (b) The emergency department employee obtaining information from the database
275 shall, when gaining access to the database, provide to the database the name and any additional

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

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

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

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

284 (iii) the division:

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

286 (B) provides the employee with a password that is unique to that employee to access
287 the database in order to permit the division to comply with the requirements of Subsection
288 58-37f-203(5) with respect to the employee.

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

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

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

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

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

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

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

306 (ii) The division shall:

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

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

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

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

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

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

321 (a) to protect patient privacy;

322 (b) to reduce inappropriate access; and

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

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

327 **58-37f-304. Database utilization.**

328 (1) As used in this section:

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

332 (b) "Outpatient" means a setting in which an individual visits a licensed healthcare
333 facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a
334 licensed healthcare facility for an overnight stay.

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

337 (d) "Schedule II opioid" means those substances listed in Subsection [58-37-4\(2\)\(b\)\(i\)](#)

338 or (2)(b)(ii).

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

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

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

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

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

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

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

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

355 (i) the database; or

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

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

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

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

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

367 (b) reduce or waive the division's continuing education requirements regarding opioid
368 prescriptions, described in Section 58-37-6.5, including the online tutorial and test relating to

369 the database, for prescribers and dispensers whose individual utilization of the database, as
370 determined by the division, demonstrates substantial compliance with this section.

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

377 (5) (a) The division shall review the database to identify and investigate any prescriber
378 who has a pattern of prescribing opioids not in accordance with the recommendations of:

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

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

383 (iii) other publications describing best practices related to prescribing opioids as
384 identified by division rule in accordance with Title 63G, Chapter 3, Utah Administrative
385 Rulemaking Act.

386 (b) The division shall provide training or other education to a prescriber identified
387 under this Subsection (5) regarding best practices in the prescribing of opioids.

Legislative Review Note
Office of Legislative Research and General Counsel