

HB0419S04 compared with HB0419S03

~~{deleted text}~~ shows text that was in HB0419S03 but was deleted in HB0419S04.

Inserted text shows text that was not in HB0419S03 but was inserted into HB0419S04.

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Senator ~~{Daniel McCay}~~Todd Weiler proposes the following substitute bill:

OPIOID TREATMENT PROGRAMS AND CONTROLLED SUBSTANCE DATABASE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies provisions relating to opioid treatment programs and the controlled substance database.

Highlighted Provisions:

This bill:

- ▶ defines a term;
- ▶ modifies requirements relating to access to the controlled substance database for emergency departments in hospitals and opioid treatment programs;
- ▶ modifies access to database information through the Department of Health;
- ▶ requires pharmacists and others who dispense methadone to a patient for the

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treatment of a substance use disorder to check the controlled substances database;

- ▶ addresses penalties for failure to check the database;
- ▶ requires the Division of Substance Abuse and Mental Health to work collaboratively with opioid treatment programs to:
 - establish a registry of patients for the purpose of protecting the health and safety of patients;
 - review and approve exceptions to federal and state dosage policies and procedures; and
 - coordinate patients' access to medication during a crisis or emergency; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37f-301, as last amended by Laws of Utah 2018, Chapter 123

58-37f-303, as enacted by Laws of Utah 2016, Chapter 112

58-37f-304, as last amended by Laws of Utah 2018, Chapters 281 and 327

58-37f-601, as last amended by Laws of Utah 2016, Chapters 112 and 238

62A-15-102, as last amended by Laws of Utah 2018, Chapter 414

62A-15-103, as last amended by Laws of Utah 2018, Chapter 322

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) 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

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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,

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employees of the Department of Health:

(i) whom the executive 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 executive director of the Department of Health, who is not an employee of the Department of Health, whom the executive 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 a written agreement entered into with the department, a designee of the executive director of the Department of Health, who is not an employee of the

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Department of Health, whom the executive director of the Department of Health assigns to conduct scientific analyses regarding the use or abuse of controlled substances in accordance with an application process established in rule made by the Department of Health, if:

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

(ii) the scientific analyses to be conducted by the designee fit within the responsibilities of the Department of Health for health and welfare;

(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, and not disclosed in any manner to the designee or to any individual who is not directly involved in the scientific analyses;

(g) (h) 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) (i) 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:

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(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)~~(f)~~(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;

~~(f)~~(i) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(h), for a purpose described in Subsection (2)~~(f)~~(i)(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

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(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)~~ (k) an employee of the same business that employs a licensed practitioner under Subsection (2)~~(j)~~ (i) 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)~~ (l) 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)~~ (m) 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)~~ (k)(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:

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(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)]~~ (n) 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;

~~[(m)]~~ (o) subject to Subsection ~~[(7)]~~ (8), 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;

~~[(t)]~~ (p) 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)]~~ (q) 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)]~~ (q)(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 treatment program described in Subsection (2)~~[(p)]~~ (q)(i)(A); and

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

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

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

~~[(q)]~~ (r) an individual who is the recipient of a controlled substance prescription

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entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made;

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

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

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

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

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

(iii) a physician offering a second opinion regarding treatment; and

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

(3) (a) (i) A practitioner described in Subsection (2)~~(r)~~(i) may designate one or more employees to access information from the database under Subsection (2)~~(i)~~(j), (2)~~(j)~~(k), ~~or~~ (4)(c), or (5)(c).

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

(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)~~(j), (2)~~(j)~~(k), ~~or~~ (4)(c), or (5)(c) should be granted access to the database; and

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(ii) establish the information to be provided by an emergency department employee or an opioid treatment program employee under ~~[Subsection]~~ Subsections (4) and (5); and

(iii) facilitate providing controlled substance prescription information to a third party under Subsection ~~[(5)]~~ (6).

(c) The division shall grant an employee designated under Subsection (2) ~~[(j)]~~ [(i)], ~~(2) [(j)] [(k)]~~, ~~[or] (4)(c), or (5)(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 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 department;
- (ii) is treating an emergency department patient for an emergency medical condition;

and

(iii) requests that an individual employed in the emergency 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 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 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]~~ hospital operating the emergency department as an individual authorized to access the information on behalf of the practitioner;

(ii) ~~[the practitioner and]~~ the hospital operating the emergency department ~~[provide]~~ provides 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~~

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~~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 or a hospital who designates an employee under Subsection (2)~~(j)~~(i), (2)~~(j)~~(k), 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) An individual who is employed by an opioid treatment program, as defined in Section 62A-15-102, may access the database under this Subsection (5) on behalf of a licensed practitioner if the individual is designated under Subsection (5)(c) and the licensed practitioner:

(i) is employed in the opioid treatment program;
(ii) is treating an opioid treatment program patient for an opioid use disorder; and
(iii) requests that an individual employed in the opioid treatment program and designated under Subsection (5)(c) obtain information regarding the patient from the database as needed in the course of treatment.

(b) The opioid treatment program 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 opioid treatment program under this Subsection (5) may obtain information from the database as provided in Subsection (5)(a) if:

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

(ii) the director or the practitioner provides 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.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on an opioid treatment program that designates an employee under Subsection (5)(c) to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

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~~[(5)]~~ (6) (a) (i) An individual may request that the division provide the information under Subsection ~~[(5)]~~ (6)(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)]~~ (6)(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)]~~ (6)(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)]~~ (6)(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)]~~ (7) (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.

~~[(7)]~~ (8) A probation or parole officer is not required to obtain a search warrant to access the database in accordance with Subsection (2)~~[(m)]~~(o).

~~[(8)]~~ (9) The division shall review and adjust the database programming which automatically logs off an individual who is granted access to the database under [~~Subsections~~ Subsection] ~~(2)(h), (2)(i), (2)(j),~~ ~~{f}~~ and ~~{g}~~ (2)(i), (2)(j), (2)(k), (4)(c), or (5)(c), to maximize the following objectives:

(a) to protect patient privacy;

(b) to reduce inappropriate access; and

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(c) to make the database more useful and helpful to a person accessing the database under [~~Subsections (1) Subsection~~ (2)(h), (2)(i), (2)(j), ~~(f)~~ and ~~(4)(c)~~, Subsection (2)(i), (2)(j), (2)(k), (4)(c), or (5)(c), especially in high usage locations such as an emergency department.

Section 2. Section **58-37f-303** is amended to read:

58-37f-303. Access to opioid prescription information via an electronic data system.

(1) As used in this section:

(a) "Dispense" means the same as that term is defined in Section 58-17b-102.

(b) (i) "EDS user" means:

~~(i) means:~~

(A) a prescriber;

(B) a pharmacist; or

(C) an individual granted access to the database under Subsection 58-37f-301(3)(c);

and

(ii) "EDS user" does not [~~mean~~] include an individual whose access to the database has been revoked by the division pursuant to Subsection 58-37f-301~~(5)~~(6)(b).

(c) "Electronic data system" means a software product or an electronic service used by:

(i) a prescriber to manage electronic health records; or

(ii) a pharmacist to manage the dispensing of prescription drugs.

(d) "Opioid" means any substance listed in Subsection 58-37-4(2)(b)(i) or (2)(b)(ii).

(e) "Pharmacist" means the same as that term is defined in Section 58-17b-102.

(f) "Prescriber" means a practitioner, as that term is defined in Section 58-37-2, who is licensed under Section 58-37-6 to prescribe an opioid.

(g) "Prescription drug" means the same as that term is defined in Section 58-17b-102.

(2) Subject to Subsections (3) through (6), no later than January 1, 2017, the division shall make opioid prescription information in the database available to an EDS user via the user's electronic data system.

(3) An electronic data system may be used to make opioid prescription information in the database available to an EDS user only if the electronic data system complies with rules established by the division under Subsection (4).

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

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Administrative Rulemaking Act, specifying:

(i) an electronic data system's:

(A) allowable access to and use of opioid prescription information in the database; and

(B) minimum actions that must be taken to ensure that opioid prescription information accessed from the database is protected from inappropriate disclosure or use; and

(ii) an EDS user's:

(A) allowable access to opioid prescription information in the database via an electronic data system; and

(B) allowable use of the information.

(b) The rules shall establish:

(i) minimum user identification requirements that in substance are the same as the database identification requirements in Section 58-37f-301;

(ii) user access restrictions that in substance are the same as the database identification requirements in Section 58-37f-301; and

(iii) any other requirements necessary to ensure that in substance the provisions of Sections 58-37f-301 and 58-37f-302 apply to opioid prescription information in the database that has been made available to an EDS user via an electronic data system.

(5) The division may not make opioid prescription information in the database available to an EDS user via the user's electronic data system if:

(a) the electronic data system does not comply with the rules established by the division under Subsection (4); or

(b) the EDS user does not comply with the rules established by the division under Subsection (4).

(6) (a) The division shall periodically audit the use of opioid prescription information made available to an EDS user via the user's electronic data system.

(b) The audit shall review compliance by:

(i) the electronic data system with rules established by the division under Subsection (4); and

(ii) the EDS user with rules established by the division under Subsection (4).

(c) (i) If the division determines by audit or other means that an electronic data system is not in compliance with rules established by the division under Subsection (4), the division

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shall immediately suspend or revoke the electronic data system's access to opioid prescription information in the database.

(ii) If the division determines by audit or other means that an EDS user is not in compliance with rules established by the division under Subsection (4), the division shall immediately suspend or revoke the EDS user's access to opioid prescription information in the database via an electronic data system.

(iii) If the division suspends or revokes access to opioid prescription information in the database under Subsection (6)(c)(i) or (6)(c)(ii), the division shall also take any other appropriate corrective or disciplinary action authorized by this chapter or title.

Section 3. Section **58-37f-304** is amended to read:

58-37f-304. Database utilization.

(1) As used in this section:

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

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

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

~~[(d)]~~ (c) "Schedule II opioid" means ~~[those substances]~~ a substance listed in Subsection 58-37-4(2)(b)(i) or (2)(b)(ii).

~~[(e)]~~ (d) "Schedule III opioid" means ~~[those substances]~~ a substance listed in Subsection 58-37-4(2)(c) that ~~[are opioids]~~ is an opioid.

(e) "Treatment dispenser" means a dispenser who dispenses methadone for the treatment of a substance use disorder, as defined in Section 62A-15-1202.

(2) (a) A prescriber shall check the database for information about a patient before the first time the prescriber gives a prescription to a patient for a Schedule II opioid or a Schedule III opioid.

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

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(i) the database; or

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

(c) A prescriber may assign the access and review required under Subsection (2)(a) to one or more employees in accordance with Subsections 58-37f-301(2)~~[(j)]~~[(i)] and ~~[(j)]~~[(k)].

(d) (i) A prescriber may comply with ~~[the requirements in]~~ Subsections (2)(a) and (b) by checking an electronic health record system if the electronic health record system:

(A) is connected to the database through a connection that has been approved by the division; and

(B) displays the information from the database in a prominent manner for the prescriber.

(ii) The division may not approve a connection to the database if the connection does not satisfy the requirements established by the division under Section 58-37f-301.

(e) A prescriber is not in violation of ~~[the requirements of]~~ Subsection (2)(a) or (b) if the failure to comply with Subsection (2)(a) or (b):

(i) is necessary due to an emergency situation;

(ii) is caused by a suspension or disruption in the operation of the database; or

(iii) is caused by a failure in the operation or availability of the Internet.

(f) The division may not take action against the license of a prescriber for failure to comply with this Subsection (2) unless the failure occurs after the earlier of:

(i) December 31, 2018; or

(ii) the date that the division has the capability to establish a connection that meets the requirements established by the division under Section 58-37f-301 between the database and an electronic health record system.

(3) (a) A treatment dispenser shall check the database for information about a patient before the first time the treatment dispenser dispenses methadone to the patient.

(b) If a treatment dispenser is repeatedly dispensing methadone to a patient, the treatment dispenser shall, at least each calendar month that the treatment dispenser dispenses methadone to the patient, review information about the patient in:

(i) the database; or

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

(c) (i) A treatment dispenser may comply with Subsections (3)(a) and (b) by checking

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an electronic health record system if the electronic health record system:

(A) is connected to the database through a connection that has been approved by the division; and

(B) displays the information from the database in a prominent manner for the treatment dispenser.

(ii) The division may not approve a connection to the database if the connection does not satisfy the requirements established by the division under Section 58-37f-301.

(d) A treatment dispenser is not in violation of Subsection (3)(a) or (b) if the failure to comply with Subsection (3)(a) or (b):

(i) is necessary due to an emergency situation;

(ii) is caused by a suspension or disruption in the operation of the database; or

(iii) is caused by a failure in the operation or availability of the Internet.

(e) The division may not take action against the license of a treatment dispenser for failure to comply with this Subsection (3) unless the failure occurs after the earlier of:

(i) December 31, 2019; or

(ii) the date that the division has the capability to establish a connection that meets the requirements established by the division under Section 58-37f-301 between the database and an electronic health record system.

~~[(3)]~~ (4) The division shall, in collaboration with the licensing boards for prescribers and dispensers:

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

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

~~[(4)]~~ (5) If the dispenser's access and review of the database suggest that the individual seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with generally recognized standards as provided in this section and Section 58-37f-201, the dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed,

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current, and professional decision regarding whether the prescribed opioid is medically justified, notwithstanding the results of the database search.

~~(5)~~ (6) (a) The division shall review the database to identify any prescriber who has a pattern of prescribing opioids not in accordance with the recommendations of:

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

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

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

(b) The division shall offer education to a prescriber identified under this Subsection ~~(5)~~ (6) regarding best practices in the prescribing of opioids.

(c) A decision by a prescriber to accept or not accept the education offered by the division under this Subsection ~~(5)~~ (6) is voluntary.

(d) The division may not use an identification the division has made under this Subsection ~~(5)~~ (6) or the decision by a prescriber to accept or not accept education offered by the division under this Subsection ~~(5)~~ (6) in a licensing investigation or action by the division.

(e) Any record created by the division as a result of this Subsection ~~(5)~~ (6) is a protected record under Section 63G-2-305.

Section 4. Section **58-37f-601** is amended to read:

58-37f-601. Unlawful release or use of database information -- Criminal and civil penalties.

(1) (a) Any person who knowingly and intentionally releases:

(i) any information in the database or any information obtained from other state or federal prescription monitoring programs by means of the database in violation of the limitations under Part 3, Access and Utilization, is guilty of a third degree felony; or

(ii) any information in the database accessed under Section 58-37f-303 by an electronic data system, or accessed by a person via an electronic data system, in violation of rules established by the division under Subsection 58-37f-303(4) is guilty of a third degree felony.

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(b) Any person who negligently or recklessly releases:

(i) any information in the database or any information obtained from other state or federal prescription monitoring programs by means of the database in violation of the limitations under Part 3, Access and Utilization, is guilty of a class C misdemeanor; or

(ii) any information in the database accessed under Section 58-37f-303 by an electronic data system, or accessed by a person via an electronic data system, in violation of rules established by the division under Subsection 58-37f-303(4) is guilty of a class C misdemeanor.

(2) (a) Any person who obtains or attempts to obtain the following by misrepresentation or fraud is guilty of a third degree felony:

(i) information from the database;

(ii) information from any other state or federal prescription monitoring program by means of the database; or

(iii) information from the database or any other state or federal prescription monitoring program via an electronic data system under Section 58-37f-303.

(b) Any person who obtains or attempts to obtain information from the database, including via an electronic data system under Section 58-37f-303 that has access to the database, for a purpose other than a purpose authorized by this chapter or by rule is guilty of a third degree felony.

(3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person the following information for any purpose other than those specified in Part 3, Access and Utilization:

(i) information obtained from the database;

(ii) information obtained from any other state or federal prescription monitoring program by means of the database; or

(iii) information in the database accessed under Section 58-37f-303 by:

(A) an electronic data system; or

(B) a person via an electronic data system.

(b) Each separate violation of this Subsection (3) is a third degree felony and is also subject to a civil penalty not to exceed \$5,000.

(c) The procedure for determining a civil violation of this Subsection (3) is in

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accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(d) Civil penalties assessed under this Subsection (3) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(e) This Subsection (3) does not prohibit a person who obtains information from the database under Subsection 58-37f-301(2)(~~i~~, [~~h~~), (~~i~~), (~~k~~), ~~{f}~~ or] (2)(j), (2)(l), (4)(c), or (5)(c) from:

(i) including the information in the person's medical chart or file for access by a person authorized to review the medical chart or file; or

(ii) providing the information to a person in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996.

Section 5. Section **62A-15-102** is amended to read:

62A-15-102. Definitions.

As used in this chapter:

(1) "Criminal risk factors" means a person's characteristics and behaviors that:

(a) affect the person's risk of engaging in criminal behavior; and

(b) are diminished when addressed by effective treatment, supervision, and other support resources, resulting in reduced risk of criminal behavior.

(2) "Director" means the director of the Division of Substance Abuse and Mental Health.

(3) "Division" means the Division of Substance Abuse and Mental Health established in Section 62A-15-103.

(4) "Local mental health authority" means a county legislative body.

(5) "Local substance abuse authority" means a county legislative body.

(6) "Mental health crisis" means:

(a) a mental health condition that manifests in an individual by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention or intervention to result in:

(i) serious danger to the individual's health or well-being; or

(ii) a danger to the health or well-being of others; or

(b) a mental health condition that, in the opinion of a mental health therapist or the therapist's designee, requires direct professional observation or intervention.

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(7) "Mental health crisis response training" means community-based training that educates laypersons and professionals on the warning signs of a mental health crisis and how to respond.

(8) "Mental health crisis services" means an array of services provided to an individual who experiences a mental health crisis, which may include:

- (a) direct mental health services;
- (b) on-site intervention provided by a mobile crisis outreach team;
- (c) the provision of safety and care plans;
- (d) prolonged mental health services for up to 90 days after the day on which an individual experiences a mental health crisis;
- (e) referrals to other community resources;
- (f) local mental health crisis lines; and
- (g) the statewide mental health crisis line.

(9) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(10) "Mobile crisis outreach team" or "MCOT" means a mobile team of medical and mental health professionals that, in coordination with local law enforcement and emergency medical service personnel, provides mental health crisis services.

(11) "Opioid treatment program" means a program or practitioner that is:

(a) engaged in opioid treatment of individuals with an opioid agonist treatment medication registered under 21 U.S.C. Sec. 823(g)(1);

(b) licensed by the Office of Licensing, within the Department of Human Services, created in Section 62A-2-103; and

(c) certified by the Substance Abuse and Mental Health Services Administration in accordance with 42 C.F.R. 8.11.

~~[(11)]~~ (12) (a) "Public funds" means federal money received from the Department of Human Services or the Department of Health, and state money appropriated by the Legislature to the Department of Human Services, the Department of Health, a county governing body, or a local substance abuse authority, or a local mental health authority for the purposes of providing substance abuse or mental health programs or services.

(b) "Public funds" include federal and state money that has been transferred by a local

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substance abuse authority or a local mental health authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority. The money maintains the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local substance abuse authority or a local mental health authority to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority.

(c) Public funds received for the provision of services pursuant to substance abuse or mental health service plans may not be used for any other purpose except those authorized in the contract between the local mental health or substance abuse authority and provider for the provision of plan services.

~~[(12)]~~ (13) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the division.

~~[(13)]~~ (14) "Statewide mental health crisis line" means the same as that term is defined in Section 63C-18-102.

Section 6. Section **62A-15-103** is amended to read:

62A-15-103. Division -- Creation -- Responsibilities.

(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director. The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder,

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by identifying and disseminating information about effective practices and programs;

(v) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop, in collaboration with public and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the department under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(vi) promote integrated programs that address an individual's substance abuse, mental health, physical health, and criminal risk factors;

(vii) establish and promote an evidence-based continuum of screening, assessment, prevention, treatment, and recovery support services in the community for individuals with substance use disorder and mental illness that addresses criminal risk factors;

(viii) evaluate the effectiveness of programs described in this Subsection (2);

(ix) consider the impact of the programs described in this Subsection (2) on:

(A) emergency department utilization;

(B) jail and prison populations;

(C) the homeless population; and

(D) the child welfare system; and

(x) promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health;

(ii) provide direction over the state hospital including approval of its budget, administrative policy, and coordination of services with local service plans;

(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that an individual receiving services through a local mental health authority or the Utah State Hospital be informed about and, if desired by the individual, provided assistance in the completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

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(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

(vii) examine expenditures of local, state, and federal funds;

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;

(B) local mental health authorities; and

(C) in counties where they exist, a private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services that include community-based services for individuals involved in the criminal justice system, in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services, or services for individuals involved in the criminal justice system, according to division rules;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

(A) a statewide comprehensive continuum of substance abuse services;

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- (B) a statewide comprehensive continuum of mental health services;
- (C) services result in improved overall health and functioning;
- (D) a statewide comprehensive continuum of community-based services designed to reduce criminal risk factors for individuals who are determined to have substance abuse or mental illness conditions or both, and who are involved in the criminal justice system;
- (E) compliance, where appropriate, with the certification requirements in Subsection (2)(j); and
- (F) appropriate expenditure of public funds;
- (xii) review and make recommendations regarding each local substance abuse authority's contract with the local substance abuse authority's provider of substance abuse programs and services and each local mental health authority's contract with the local mental health authority's provider of mental health programs and services to ensure compliance with state and federal law and policy;
- (xiii) monitor and ensure compliance with division rules and contract requirements; and
- (xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;
- (d) ensure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;
- (e) require each local substance abuse authority and each local mental health authority, in accordance with Subsections 17-43-201(5)(b) and 17-43-301[(5)](6)(a)(ii), to submit a plan to the division on or before May 15 of each year;
- (f) conduct an annual program audit and review of each local substance abuse authority and each local substance abuse authority's contract provider, and each local mental health authority and each local mental health authority's contract provider, including:
 - (i) a review and determination regarding whether:
 - (A) public funds allocated to the local substance abuse authority or the local mental health authorities are consistent with services rendered by the authority or the authority's contract provider, and with outcomes reported by the authority's contract provider; and

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(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance use disorder and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate; and

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

(h) (i) train and certify an adult as a peer support specialist, qualified to provide peer supports services to an individual with:

(A) a substance use disorder;

(B) a mental health disorder; or

(C) a substance use disorder and a mental health disorder;

(ii) certify a person to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist;

(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) establish training and certification requirements for a peer support specialist;

(B) specify the types of services a peer support specialist is qualified to provide;

(C) specify the type of supervision under which a peer support specialist is required to operate; and

(D) specify continuing education and other requirements for maintaining or renewing certification as a peer support specialist; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) establish the requirements for a person to be certified to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist; and

(B) specify how the division shall provide oversight of a person certified to train and certify a peer support specialist;

(i) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance use disorder and mental health treatment to an individual who is required to participate in treatment by the court or the Board of Pardons and Parole, or who is incarcerated, including:

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(i) collaboration with the Department of Corrections and the Utah Substance Use and Mental Health Advisory Council to develop and coordinate the standards, including standards for county and state programs serving individuals convicted of class A and class B misdemeanors;

(ii) determining that the standards ensure available treatment, including the most current practices and procedures demonstrated by recognized scientific research to reduce recidivism, including focus on the individual's criminal risk factors; and

(iii) requiring that all public and private treatment programs meet the standards established under this Subsection (2)(i) in order to receive public funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice for the costs of providing screening, assessment, prevention, treatment, and recovery support;

(j) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements and procedures for the certification of licensed public and private providers who provide, as part of their practice, substance use disorder and mental health treatment to an individual involved in the criminal justice system, including:

(i) collaboration with the Department of Corrections, the Utah Substance Use and Mental Health Advisory Council, and the Utah Association of Counties to develop, coordinate, and implement the certification process;

(ii) basing the certification process on the standards developed under Subsection (2)(i) for the treatment of an individual involved in the criminal justice system; and

(iii) the requirement that a public or private provider of treatment to an individual involved in the criminal justice system shall obtain certification on or before July 1, 2016, and shall renew the certification every two years, in order to qualify for funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice on or after July 1, 2016;

(k) collaborate with the Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:

(i) pretrial services and the resources needed to reduce recidivism;

(ii) county jail and county behavioral health early-assessment resources needed for an offender convicted of a class A or class B misdemeanor; and

(iii) the replacement of federal dollars associated with drug interdiction law

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enforcement task forces that are reduced;

(l) (i) establish performance goals and outcome measurements for all treatment programs for which minimum standards are established under Subsection (2)(i), including recidivism data and data regarding cost savings associated with recidivism reduction and the reduction in the number of inmates, that are obtained in collaboration with the Administrative Office of the Courts and the Department of Corrections; and

(ii) collect data to track and determine whether the goals and measurements are being attained and make this information available to the public;

(m) work collaboratively with opioid treatment programs to establish a registry of patients in opioid treatment programs for the purpose of protecting the health and safety of patients;

(n) if designated as the specific state authority under 21 U.S.C. Sec. 823(j), coordinate patients' access to medication during a crisis or emergency;

(o) if designated by the governor as the state authority under 42 C.F.R. Sec. 8.2 to exercise the responsibility and authority within the state for governing the treatment of opioid use disorder with an opioid drug;

(i) review and approve exceptions to federal and state dosage policies as provided in 42 C.F.R. Sec. 8.11; and

(ii) consult with the Substance Abuse and Mental Health Services Administration regarding applications for certification or renewal of certification of an opioid treatment program as provided in 42 C.F.R. Sec. 8.11;

~~(m)~~ (p) in the division's discretion, use the data to make decisions regarding the use of funds allocated to the division, the Administrative Office of the Courts, and the Department of Corrections to provide treatment for which standards are established under Subsection (2)(i); and

~~(m)~~ (q) annually, on or before August 31, submit the data collected under Subsection (2)(k) to the Commission on Criminal and Juvenile Justice, which shall compile a report of findings based on the data and provide the report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees.

(3) (a) The division may refuse to contract with and may pursue legal remedies against

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any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with the oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.

(5) In carrying out the division's duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

(6) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(7) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:

- (a) use of public funds;
- (b) oversight of public funds; and
- (c) governance of substance use disorder and mental health programs and services.

(8) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(9) If a local substance abuse authority contacts the division under Subsection 17-43-201(10) for assistance in providing treatment services to a pregnant woman or pregnant

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minor, the division shall:

- (a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or
- (b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.