

PRESCRIPTION REVISIONS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Suzanne Harrison

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends provisions relating to prescriptions for controlled substances.

Highlighted Provisions:

This bill:

- ▶ requires, with some exceptions, that prescriptions for controlled substances be issued electronically;
- ▶ authorizes the division to create rules for certain aspects of prescribing controlled substances;
- ▶ amends the protocol for the dispensing of drugs by practitioners in the emergency room; and
- ▶ repeals Title 58, Chapter 82, Electronic Prescribing Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-17b-610.5, as last amended by Laws of Utah 2016, Chapter 238

58-37-6, as last amended by Laws of Utah 2018, Chapter 318

REPEALS:



28 **58-82-101**, as enacted by Laws of Utah 2009, Chapter 47

29 **58-82-102**, as last amended by Laws of Utah 2010, Chapter 276

30 **58-82-201**, as last amended by Laws of Utah 2012, Chapter 160

31

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

33 Section 1. Section **58-17b-610.5** is amended to read:

34 **58-17b-610.5. Dispensing in emergency department -- Patient's immediate need.**

35 (1) As used in this section, "controlled substance" means a substance classified as a
36 controlled substance by the federal Controlled Substances Act, Title II, Pub. L. No. 91-513 et
37 seq., or by Chapter 37, Utah Controlled Substances Act.

38 ~~[(+)]~~ (2) The division shall adopt administrative rules in accordance with Title 63G,
39 Chapter 3, Utah Administrative Rulemaking Act, in consultation with hospital pharmacies and
40 the boards of practitioners authorized to prescribe prescription drugs to establish guidelines
41 under which a practitioner may dispense prescription drugs to a patient in a hospital emergency
42 department if:

43 (a) the hospital pharmacy is closed;

44 (b) in the professional judgment of the practitioner, dispensing the drug is necessary for
45 the patient's immediate needs; ~~[and]~~

46 (c) dispensing the prescription drug meets protocols established by the hospital
47 pharmacy~~[-]; and~~

48 (d) the practitioner dispenses only a sufficient amount of the prescription drug as
49 necessary to last until a pharmacy can fill the prescription.

50 ~~[(2)]~~ (3) A practitioner in an emergency department may dispense a prescription drug
51 in accordance with Subsection ~~[(+)]~~ (2).

52 (4) Under Subsection (2), a practitioner may not dispense more than a two-day supply
53 of a controlled substance.

54 Section 2. Section **58-37-6** is amended to read:

55 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
56 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
57 **required -- Prescriptions.**

58 (1) (a) The division may adopt rules relating to the licensing and control of the

59 manufacture, distribution, production, prescription, administration, dispensing, conducting of
60 research with, and performing of laboratory analysis upon controlled substances within this
61 state.

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

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

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

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

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

80 (i) an agent or employee, except a sales representative, of any registered manufacturer,
81 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
82 usual course of the [person's] agent or employee's business or employment; however, nothing
83 in this subsection shall be interpreted to permit an agent, employee, sales representative, or
84 detail man to maintain an inventory of controlled substances separate from the location of the
85 person's employer's registered and licensed place of business;

86 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
87 warehouseman, who possesses [any] a controlled substance in the usual course of the person's
88 business or employment; and

89 (iii) an ultimate user, or [any] a person who possesses any controlled substance

90 pursuant to a lawful order of a practitioner.

91 (d) The division may enact rules waiving the license requirement for certain
92 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
93 practitioners, or laboratories performing analysis if waiving the license requirement is
94 consistent with ~~the~~ public health and safety.

95 (e) A separate license is required at each principal place of business or professional
96 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
97 with, or performs laboratory analysis upon controlled substances.

98 (f) The division may enact rules providing for the inspection of a licensee or applicant's
99 establishment, and may inspect the establishment according to those rules.

100 (3) (a) (i) Upon proper application, the division shall license a qualified applicant to
101 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
102 controlled substances included in Schedules I through V, unless it determines that issuance of a
103 license is inconsistent with the public interest.

104 (ii) The division may not issue a license to any person to prescribe, dispense, or
105 administer a Schedule I controlled substance except under Subsection (3)(a)(i).

106 (iii) In determining public interest under this Subsection (3)(a), the division shall
107 consider whether ~~or not~~ the applicant has:

108 (A) maintained effective controls against diversion of controlled substances and any
109 Schedule I or II substance compounded from any controlled substance into channels other than
110 legitimate medical, scientific, or industrial channels;

111 (B) complied with applicable state and local law;

112 (C) been convicted under federal or state laws relating to the manufacture, distribution,
113 or dispensing of substances;

114 (D) past experience in the manufacture of controlled dangerous substances;

115 (E) established effective controls against diversion; and

116 (F) complied with any other factors that the division establishes that promote the public
117 health and safety.

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

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

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

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

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

136 (v) Practitioners registered under federal law to conduct research in Schedule I
137 substances may conduct research in Schedule I substances within this state upon [~~furnishing~~
138 providing the division with evidence of federal registration.

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

142 (e) The division shall initially license those persons who own or operate an
143 establishment engaged in the manufacture, production, distribution, dispensation, or
144 administration of controlled substances prior to April 3, 1980, and who are licensed by the
145 state.

146 (4) (a) Any license issued pursuant to Subsection (2) or (3) may be denied, suspended,
147 placed on probation, or revoked by the division upon finding that the applicant or licensee has:

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

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

151 (iii) been convicted of a felony under any other law of the United States or any state

152 within five years of the date of the issuance of the license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

217 (7) (a) [~~A person~~] An individual may not write or authorize a prescription for a
218 controlled substance unless the [~~person~~] individual is:

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

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

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

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

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

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

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

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

240 (i) the name, address, and registry number of the prescriber;

241 (ii) the name, address, and age of the person to whom or for whom the prescription is
242 issued;

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

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

245 controlled substance.

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

248 (i) the ~~[person]~~ individual who writes the prescription is licensed under Subsection (2);
249 and

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

251 (f) Except when administered directly to an ultimate user by a licensed practitioner,
252 controlled substances are subject to the restrictions of this Subsection (7)(f).

253 (i) A prescription for a Schedule II substance may not be refilled.

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

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

260 (B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when
261 the practitioner determined that a quantity exceeding seven days is needed, in which case the
262 practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the
263 practitioner.

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

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

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

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

275 (vi) Any prescription for a Schedule II substance may not be dispensed if it is not

276 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
 277 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
 278 specified separately from the date of issue.

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

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

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

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

286 (g) (i) Beginning January 1, 2022, each prescription issued for a controlled substance
 287 shall be transmitted electronically as an electronic prescription unless the prescription is:

288 (A) for a patient residing in an assisted living facility as that term is defined in Section
 289 26-21-2, a long-term care facility as that term is defined in Section 58-31b-102, or a
 290 correctional facility as that term is defined in Section 64-13-1;

291 (B) issued by a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice
 292 Act;

293 (C) dispensed by a Department of Veterans Affairs pharmacy;

294 (D) issued during a temporary technical or electronic failure at the practitioner's or
 295 pharmacy's location; or

296 (E) issued in an emergency situation.

297 (ii) The division, in collaboration with the ~~H~~→ **appropriate** ←~~H~~ boards that govern the
 297a licensure of the

298 licensees who are authorized by the division to prescribe ~~H~~→ **or to dispense** ←~~H~~ controlled
 298a substances, shall make

299 rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act to:

300 (A) require that controlled substances prescribed or dispensed under Subsection
 301 (7)(g)(i)(D) indicate on the prescription that the prescribing practitioner or the pharmacy is
 302 experiencing a technical difficulty or an electronic failure;

303 (B) define an emergency situation for purposes of Subsection (7)(g)(i)(E);

304 (C) establish additional exemptions to the electronic prescription requirements
 305 established in this Subsection (7)(g);

306 (D) establish guidelines under which a prescribing practitioner or a pharmacy may

307 obtain an extension of up to two additional years to comply with Subsection (7)(g)(i);

308 (E) establish a protocol to follow if the pharmacy that receives the electronic

309 prescription is not able to fill the prescription; and

310 (F) establish requirements ~~H~~→ **that comply with federal laws and regulations** ←~~H~~ for

310a software used to issue and dispense electronic

311 prescriptions.

312 [~~g~~] (h) An order for a controlled substance in Schedules II through V for use by an

313 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this

314 Subsection (7) if the order is:

315 (i) issued or made by a prescribing practitioner who holds an unrestricted registration

316 with the federal Drug Enforcement Administration, and an active Utah controlled substance

317 license in good standing issued by the division under this section, or a medical resident who is

318 exempted from licensure under Subsection [58-1-307\(1\)\(c\)](#);

319 (ii) authorized by the prescribing practitioner treating the patient and the prescribing

320 practitioner designates the quantity ordered;

321 (iii) entered upon the record of the patient, the record is signed by the prescriber

322 affirming the prescriber's authorization of the order within 48 hours after filling or

323 administering the order, and the patient's record reflects the quantity actually administered; and

324 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within

325 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by

326 the hospital and the amount taken from the supply is administered directly to the patient

327 authorized to receive it.

328 [~~h~~] (i) A practitioner licensed under this chapter may not prescribe, administer, or

329 dispense a controlled substance to a child, without first obtaining the consent required in

330 Section [78B-3-406](#) of a parent, guardian, or person standing in loco parentis of the child except

331 in cases of an emergency. For purposes of [~~this~~] Subsection (7)[~~h~~](i), "child" has the same

332 meaning as defined in Section [78A-6-105](#), and "emergency" means any physical condition

333 requiring the administration of a controlled substance for immediate relief of pain or suffering.

334 [~~i~~] (j) A practitioner licensed under this chapter may not prescribe or administer

335 dosages of a controlled substance in excess of medically recognized quantities necessary to

336 treat the ailment, malady, or condition of the ultimate user.

337 [~~j~~] (k) A practitioner licensed under this chapter may not prescribe, administer, or

338 dispense any controlled substance to another person knowing that the other person is using a
339 false name, address, or other personal information for the purpose of securing the controlled
340 substance.

341 ~~[(k)]~~ (l) A person who is licensed under this chapter to manufacture, distribute, or
342 dispense a controlled substance may not manufacture, distribute, or dispense a controlled
343 substance to another licensee or any other authorized person not authorized by this license.

344 ~~[(h)]~~ (m) A person licensed under this chapter may not omit, remove, alter, or obliterate
345 a symbol required by this chapter or by a rule issued under this chapter.

346 ~~[(m)]~~ (n) A person licensed under this chapter may not refuse or fail to make, keep, or
347 furnish any record notification, order form, statement, invoice, or information required under
348 this chapter.

349 ~~[(m)]~~ (o) A person licensed under this chapter may not refuse entry into any premises
350 for inspection as authorized by this chapter.

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

355 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
356 violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to
357 a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of
358 any violations in accordance with Sections [58-1-106](#) and [58-1-108](#).

359 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the
360 General Fund as a dedicated credit to be used by the division under Subsection [58-37f-502\(1\)](#).

361 (iii) The director may collect a penalty that is not paid by:

362 (A) referring the matter to a collection agency; or

363 (B) bringing an action in the district court of the county where the person against
364 whom the penalty is imposed resides or in the county where the office of the director is located.

365 (iv) A county attorney or the attorney general of the state shall provide legal assistance
366 and advice to the director in an action to collect a penalty.

367 (v) A court shall award reasonable attorney fees and costs to the prevailing party in an
368 action brought by the division to collect a penalty.

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

- 371 (i) upon first conviction, guilty of a class B misdemeanor;
- 372 (ii) upon second conviction, guilty of a class A misdemeanor; and
- 373 (iii) on third or subsequent conviction, guilty of a third degree felony.

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

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

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

383 Section 3. **Repealer.**

384 This bill repeals:

385 Section 58-82-101, **Title.**

386 Section 58-82-102, **Definitions.**

387 Section 58-82-201, **Electronic prescriptions -- Restrictions -- Rulemaking**
388 **authority.**