

1 **CONTROLLED SUBSTANCES DATABASE ACT AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad M. Daw**

5 Senate Sponsor: Ronald Winterton

6

7 **LONG TITLE**

8 **General Description:**

9 This bill adds pharmacy interns and technicians to persons with access to the Controlled
10 Substance Database.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ adds pharmacy interns and technicians under the supervision of a licensed
- 14 pharmacist to those allowed to access the Controlled Substance Database; and
- 15 ▶ makes technical corrections.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **58-37f-203**, as last amended by Laws of Utah 2019, Chapter 59

23 **58-37f-301**, as last amended by Laws of Utah 2018, Chapter 123

24 **58-37f-303**, as enacted by Laws of Utah 2016, Chapter 112

25 **58-37f-304**, as last amended by Laws of Utah 2019, Chapter 128

26

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



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

29 **58-37f-203. Submission, collection, and maintenance of data.**

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

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

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

37 (b) ~~(f)~~ On and after January 1, 2016, a pharmacist shall comply with either:

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

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

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

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

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

48 (i) the requirements of this section;

49 (ii) the procedures established by the division;

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

51 (iv) the format established by the division.

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

56 (3) (a) The pharmacist-in-charge and the pharmacist described in Subsection (2)(b)
57 shall, for each controlled substance dispensed by a pharmacist under the pharmacist's
58 supervision other than those ~~[dispensed for an inpatient]~~ administered for a patient at a health

59 care facility, submit to the division any type of information or data field established by the
60 division by rule in accordance with Subsection (6) regarding:

61 (i) each controlled substance that is dispensed by the pharmacist or under the
62 pharmacist's supervision; and

63 (ii) each noncontrolled substance that is:

64 (A) designated by the division under Subsection (8)(a); and

65 (B) dispensed by the pharmacist or under the pharmacist's supervision.

66 (b) Subsection (3)(a) does not apply to a drug that is [~~dispensed for an inpatient~~]
67 administered to a patient at a health care facility.

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

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

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

76 (c) If the division denies a request under this Subsection (5) or does not respond within
77 35 days, the patient may submit an appeal to the Department of Commerce, within 60 days
78 after the postmark date of the patient's letter making a request for a correction under this
79 Subsection (5).

80 (6) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
81 Administrative Rulemaking Act, to establish submission requirements under this part,
82 including:

83 (a) electronic format;

84 (b) submission procedures; and

85 (c) required information and data fields.

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

88 (a) the identification of each individual who requests or receives information from the
89 database;

- 90 (b) the information provided to each individual; and
- 91 (c) the date and time that the information is requested or provided.
- 92 (8) (a) The division, in collaboration with the Utah Controlled Substance Advisory
- 93 Committee created in Section 58-38a-201, shall designate a list of noncontrolled substances
- 94 described in Subsection (8)(b) by rule made in accordance with Title 63G, Chapter 3, Utah
- 95 Administrative Rulemaking Act.
- 96 (b) To determine whether a prescription drug should be designated in the schedules of
- 97 controlled substances under this chapter, the division may collect information about a
- 98 prescription drug as defined in Section 58-17b-102 that is not designated in the schedules of
- 99 controlled substances under this chapter.

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

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

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

103 Administrative Rulemaking Act, to:

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

108 (2) The division shall make information in the database and information obtained from

109 other state or federal prescription monitoring programs by means of the database available only

110 to the following individuals, in accordance with the requirements of this chapter and division

111 rules:

- 112 (a) (i) personnel of the division specifically assigned to conduct investigations related
- 113 to controlled substance laws under the jurisdiction of the division; and
- 114 (ii) the following law enforcement officers, but the division may only provide
- 115 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding
- 116 individuals for whom a controlled substance has been prescribed or to whom a controlled
- 117 substance has been dispensed:
 - 118 (A) a law enforcement agency officer who is engaged in a joint investigation with the
 - 119 division; and
 - 120 (B) a law enforcement agency officer to whom the division has referred a suspected

121 criminal violation of controlled substance laws;

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

125 (c) a board member if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

182 (h) a licensed practitioner having authority to prescribe controlled substances, to the

183 extent the information:

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

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

186 (I) prescribing or considering prescribing any controlled substance to the current or

187 prospective patient;

188 (II) diagnosing the current or prospective patient;

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

190 patient; or

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

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

193 or

194 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled

195 substance from the practitioner;

196 (ii) (A) relates specifically to a former patient of the practitioner; and

197 (B) is provided to or sought by the practitioner for the purpose of determining whether

198 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a

199 controlled substance from the practitioner;

200 (iii) relates specifically to an individual who has access to the practitioner's Drug

201 Enforcement Administration identification number, and the practitioner suspects that the

202 individual may have used the practitioner's Drug Enforcement Administration identification

203 number to fraudulently acquire or prescribe a controlled substance;

204 (iv) relates to the practitioner's own prescribing practices, except when specifically

205 prohibited by the division by administrative rule;

206 (v) relates to the use of the controlled substance database by an employee of the

207 practitioner, described in Subsection (2)(i); or

208 (vi) relates to any use of the practitioner's Drug Enforcement Administration

209 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a

210 controlled substance;

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

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

213 (i) the employee is designated by the practitioner as an individual authorized to access

214 the information on behalf of the practitioner;

215 (ii) the practitioner provides written notice to the division of the identity of the

216 employee; and

217 (iii) the division:

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

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

220 the database in order to permit the division to comply with the requirements of Subsection

221 58-37f-203(5) with respect to the employee;

222 (j) an employee of the same business that employs a licensed practitioner under

223 Subsection (2)(h) if:

224 (i) the employee is designated by the practitioner as an individual authorized to access

225 the information on behalf of the practitioner;

226 (ii) the practitioner and the employing business provide written notice to the division of

227 the identity of the designated employee; and

228 (iii) the division:

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

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

231 the database in order to permit the division to comply with the requirements of Subsection

232 58-37f-203(5) with respect to the employee;

233 (k) a licensed pharmacist having authority to dispense a controlled substance, or a

234 licensed pharmacy intern or pharmacy technician working under the general supervision of a

235 licensed pharmacist, to the extent the information is provided or sought for the purpose of:

236 (i) dispensing or considering dispensing any controlled substance; [~~or~~]

237 (ii) determining whether a person:

238 (A) is attempting to fraudulently obtain a controlled substance from the [~~pharmacist~~]

239 pharmacy, practitioner, or health care facility; or

240 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled

241 substance from the [~~pharmacist~~] pharmacy, practitioner, or health care facility;

242 (iii) reporting to the controlled substance database; or

243 (iv) verifying the accuracy of the data submitted to the controlled substance database

244 on behalf of a pharmacy where the licensed pharmacist, pharmacy intern, or pharmacy

245 technician is employed;

246 ~~[(1) in accordance with Subsection (3)(a), a licensed pharmacy technician and~~
 247 ~~pharmacy intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the~~
 248 ~~purposes described in Subsection (2)(j)(i) or (ii), if:]~~

249 ~~[(i) the employee is designated by the pharmacist-in-charge as an individual authorized~~
 250 ~~to access the information on behalf of a licensed pharmacist employed by the pharmacy;]~~

251 ~~[(ii) the pharmacist-in-charge provides written notice to the division of the identity of~~
 252 ~~the employee; and]~~

253 ~~[(iii) the division:]~~

254 ~~[(A) grants the employee access to the database; and]~~

255 ~~[(B) provides the employee with a password that is unique to that employee to access~~
 256 ~~the database in order to permit the division to comply with the requirements of Subsection~~
 257 ~~58-37f-203(5) with respect to the employee;]~~

258 ~~[(m)]~~ (l) pursuant to a valid search warrant, federal, state, and local law enforcement
 259 officers and state and local prosecutors who are engaged in an investigation related to:

260 (i) one or more controlled substances; and

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

262 ~~[(n)]~~ (m) subject to Subsection (7), a probation or parole officer, employed by the
 263 Department of Corrections or by a political subdivision, to gain access to database information
 264 necessary for the officer's supervision of a specific probationer or parolee who is under the
 265 officer's direct supervision;

266 ~~[(o)]~~ (n) employees of the Office of Internal Audit and Program Integrity within the
 267 Department of Health who are engaged in their specified duty of ensuring Medicaid program
 268 integrity under Section 26-18-2.3;

269 ~~[(p)]~~ (o) a mental health therapist, if:

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

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

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

275 (ii) the information is sought for the purpose of determining whether the patient is

276 using a controlled substance while the patient is enrolled in the licensed substance abuse
277 treatment program described in Subsection (2)(~~(p)~~)(o)(i)(A); and

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

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

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

284 [~~(q)~~] (p) an individual who is the recipient of a controlled substance prescription
285 entered into the database, upon providing evidence satisfactory to the division that the
286 individual requesting the information is in fact the individual about whom the data entry was
287 made;

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

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

295 [~~(t)~~] (s) the following licensed physicians for the purpose of reviewing and offering an
296 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
297 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

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

302 [~~(u)~~] (t) members of Utah's Opioid Fatality Review Committee, for the purpose of
303 reviewing a specific fatality due to opioid use and recommending policies to reduce the
304 frequency of opioid use fatalities.

305 (3) (a) [~~(v)~~] A practitioner described in Subsection (2)(h) may designate one or more
306 employees to access information from the database under Subsection (2)(i), (2)(j), or (4)(c).

307 ~~[(ii) A pharmacist described in Subsection (2)(k) who is a pharmacist-in-charge may~~
308 ~~designate up to five employees to access information from the database under Subsection~~
309 ~~(2)(f).]~~

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

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

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

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

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

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

325 (i) is employed or privileged to work in the emergency department;

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

327 and

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

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

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

337 (i) the employee is designated by the practitioner as an individual authorized to access

338 the information on behalf of the practitioner;

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

341 (iii) the division:

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

343 (B) provides the employee with a password that is unique to that employee to access
344 the database in order to permit the division to comply with the requirements of Subsection
345 58-37f-203(5) with respect to the employee.

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

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

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

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

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

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

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

363 (ii) The division shall:

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

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

367 (6) (a) An individual who is granted access to the database based on the fact that the
368 individual is a licensed practitioner or a mental health therapist shall be denied access to the

369 database when the individual is no longer licensed.

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

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

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

378 (a) to protect patient privacy;

379 (b) to reduce inappropriate access; and

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

383 Section 3. Section **58-37f-303** is amended to read:

384 **58-37f-303. Access to opioid prescription information via an electronic data**
385 **system.**

386 (1) As used in this section:

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

388 (b) "EDS user":

389 (i) means:

390 (A) a prescriber;

391 (B) a pharmacist; ~~[or]~~

392 (C) a pharmacy intern;

393 (D) a pharmacy technician; or

394 ~~[(E)]~~ (E) an individual granted access to the database under Subsection

395 [58-37f-301\(3\)\(c\)](#); and

396 (ii) does not mean an individual whose access to the database has been revoked by the
397 division pursuant to Subsection [58-37f-301\(5\)](#)~~(b)~~(c).

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

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

400 (ii) a pharmacist, pharmacy intern, or pharmacy technician working under the general
401 supervision of a licensed pharmacist to manage the dispensing of prescription drugs.

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

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

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

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

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

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

413 (4) (a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
414 Administrative Rulemaking Act, specifying:

415 (i) an electronic data system's:

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

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

419 (ii) an EDS user's:

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

422 (B) allowable use of the information.

423 (b) The rules shall establish:

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

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

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

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

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

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

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

439 (b) The audit shall review compliance by:

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

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

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

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

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

454 Section 4. Section **58-37f-304** is amended to read:

455 **58-37f-304. Database utilization.**

456 (1) As used in this section:

457 (a) "Dispenser" means a licensed pharmacist, as described in Section 58-17b-303, [or]
458 the pharmacist's licensed intern, as described in Section 58-17b-304, or licensed pharmacy
459 technician, as described in Section 58-17b-305, working under the supervision of a licensed
460 pharmacist who is also licensed to dispense a controlled substance under Title 58, Chapter 37,
461 Utah Controlled Substances Act.

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

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

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

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

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

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

476 (i) the database; or

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

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

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

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

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

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

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

490 (i) is necessary due to an emergency situation;

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

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

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

495 (i) December 31, 2018; or

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

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

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

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

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

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

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

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

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

523 (b) The division shall offer education to a prescriber identified under this Subsection

524 (5) regarding best practices in the prescribing of opioids.

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

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

530 (e) Any record created by the division as a result of this Subsection (5) is a protected
531 record under Section [63G-2-305](#).

532 (6) The division may consult with a prescriber or health care system to assist the
533 prescriber or health care system in following evidence-based guidelines regarding the
534 prescribing of controlled substances, including the recommendations listed in Subsection
535 (5)(a).