

CONTROLLED SUBSTANCE DATABASE ACCESS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill provides access to the controlled substance database to the Utah Medicaid Fraud Control Unit.

Highlighted Provisions:

This bill:

- ▶ provides access to the controlled substance database to the Utah Medicaid Fraud Control Unit; 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 2020, Chapters 107, 147, and 339

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



28 Administrative Rulemaking Act, to:

29 (a) effectively enforce the limitations on access to the database as described in this
30 part; and

31 (b) establish standards and procedures to ensure accurate identification of individuals
32 requesting information or receiving information without request from the database.

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

37 (a) (i) personnel of the division specifically assigned to conduct investigations related
38 to controlled substance laws under the jurisdiction of the division; and

39 (ii) the following law enforcement officers, but the division may only provide
40 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding
41 individuals for whom a controlled substance has been prescribed or to whom a controlled
42 substance has been dispensed:

43 (A) a law enforcement agency officer who is engaged in a joint investigation with the
44 division; and

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

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

50 (c) a board member if:

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

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

54 (d) a person the division authorizes to obtain that information on behalf of the Utah
55 Professionals Health Program established in Subsection 58-4a-103(1) if:

56 (i) the person the division authorizes is limited to obtaining information from the
57 database regarding the person whose conduct is the subject of the division's consideration; and

58 (ii) the conduct that is the subject of the division's consideration includes a violation or

59 a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant
60 violation or potential violation under this title;

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

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

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

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

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

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

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

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

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

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

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

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

88 (iv) the identity of the prescribers, patients, and pharmacies in the database are
89 de-identified, confidential, not disclosed in any manner to the designee or to any individual

90 who is not directly involved in the scientific studies;

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

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

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

98 (B) limit the authorized employee of the managed care organization to requesting
99 either the division or the Department of Health to conduct a search of the database regarding a
100 specific Medicaid enrollee and to report the results of the search to the authorized employee;
101 and

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

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

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

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

110 (I) prescribing or considering prescribing any controlled substance to the current or
111 prospective patient;

112 (II) diagnosing the current or prospective patient;

113 (III) providing medical treatment or medical advice to the current or prospective
114 patient; or

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

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

117 or

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

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

121 (B) is provided to or sought by the practitioner for the purpose of determining whether
122 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
123 controlled substance from the practitioner;

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

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

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

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

135 (i) in accordance with Subsection (3)(a), an employee of a practitioner described in
136 Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

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

139 (ii) the practitioner provides written notice to the division of the identity of the
140 employee; and

141 (iii) the division:

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

143 (B) provides the employee with a password that is unique to that employee to access
144 the database in order to permit the division to comply with the requirements of Subsection
145 [58-37f-203\(5\)](#) with respect to the employee;

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

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

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

- 152 (iii) the division:
- 153 (A) grants the employee access to the database; and
- 154 (B) provides the employee with a password that is unique to that employee to access
- 155 the database in order to permit the division to comply with the requirements of Subsection
- 156 [58-37f-203\(5\)](#) with respect to the employee;
- 157 (k) a licensed pharmacist having authority to dispense a controlled substance, or a
- 158 licensed pharmacy intern or pharmacy technician working under the general supervision of a
- 159 licensed pharmacist, to the extent the information is provided or sought for the purpose of:
- 160 (i) dispensing or considering dispensing any controlled substance;
- 161 (ii) determining whether a person:
- 162 (A) is attempting to fraudulently obtain a controlled substance from the pharmacy,
- 163 practitioner, or health care facility; or
- 164 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
- 165 substance from the pharmacy, practitioner, or health care facility;
- 166 (iii) reporting to the controlled substance database; or
- 167 (iv) verifying the accuracy of the data submitted to the controlled substance database
- 168 on behalf of a pharmacy where the licensed pharmacist, pharmacy intern, or pharmacy
- 169 technician is employed;
- 170 (l) pursuant to a valid search warrant, federal, state, and local law enforcement officers
- 171 and state and local prosecutors who are engaged in an investigation related to:
- 172 (i) one or more controlled substances; and
- 173 (ii) a specific person who is a subject of the investigation;
- 174 (m) subject to Subsection (7), a probation or parole officer, employed by the
- 175 Department of Corrections or by a political subdivision, to gain access to database information
- 176 necessary for the officer's supervision of a specific probationer or parolee who is under the
- 177 officer's direct supervision;
- 178 (n) employees of the Office of Internal Audit and Program Integrity within the
- 179 Department of Health who are engaged in their specified duty of ensuring Medicaid program
- 180 integrity under Section [26-18-2.3](#);
- 181 (o) a mental health therapist, if:
- 182 (i) the information relates to a patient who is:

- 183 (A) enrolled in a licensed substance abuse treatment program; and
- 184 (B) receiving treatment from, or under the direction of, the mental health therapist as
185 part of the patient's participation in the licensed substance abuse treatment program described
186 in Subsection (2)(o)(i)(A);
- 187 (ii) the information is sought for the purpose of determining whether the patient is
188 using a controlled substance while the patient is enrolled in the licensed substance abuse
189 treatment program described in Subsection (2)(o)(i)(A); and
- 190 (iii) the licensed substance abuse treatment program described in Subsection
191 (2)(o)(i)(A) is associated with a practitioner who:
- 192 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
193 pharmacist; and
- 194 (B) is available to consult with the mental health therapist regarding the information
195 obtained by the mental health therapist, under this Subsection (2)(o), from the database;
- 196 (p) an individual who is the recipient of a controlled substance prescription entered into
197 the database, upon providing evidence satisfactory to the division that the individual requesting
198 the information is in fact the individual about whom the data entry was made;
- 199 (q) an individual under Subsection (2)(p) for the purpose of obtaining a list of the
200 persons and entities that have requested or received any information from the database
201 regarding the individual, except if the individual's record is subject to a pending or current
202 investigation as authorized under this Subsection (2);
- 203 (r) the inspector general, or a designee of the inspector general, of the Office of
204 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
205 Title 63A, Chapter 13, Part 2, Office and Powers;
- 206 (s) the following licensed physicians for the purpose of reviewing and offering an
207 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
208 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:
- 209 (i) a member of the medical panel described in Section [34A-2-601](#);
- 210 (ii) a physician employed as medical director for a licensed workers' compensation
211 insurer or an approved self-insured employer; or
- 212 (iii) a physician offering a second opinion regarding treatment; [~~and~~]
- 213 (t) members of Utah's Opioid Fatality Review Committee, for the purpose of reviewing

214 a specific fatality due to opioid use and recommending policies to reduce the frequency of
215 opioid use fatalities[-]; and

216 (u) the Utah Medicaid Fraud Control Unit of the attorney general's office in exercising
217 the unit's authority to investigate and prosecute Medicaid fraud, abuse, neglect, or exploitation
218 under 42 U.S.C. Sec. 1396b(q).

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

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

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

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

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

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

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

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

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

237 and

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

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

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

247 (i) the employee is designated by the hospital as an individual authorized to access the
248 information on behalf of the emergency department practitioner;

249 (ii) the hospital operating the emergency department provide written notice to the
250 division of the identity of the designated employee; and

251 (iii) the division:

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

253 (B) provides the employee with a password that is unique to that employee to access
254 the database.

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

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

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

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

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

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

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

272 (ii) The division shall:

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

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

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

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

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

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

287 (a) to protect patient privacy;

288 (b) to reduce inappropriate access; and

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