

1 **CONTROLLED SUBSTANCE PRESCRIPTION**

2 **NOTIFICATION**

3 2016 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions regarding controlled substances.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the Controlled Substance Database Act to allow a person for whom a
- 14 controlled substance is prescribed to designate a third party who is to be notified
- 15 when a controlled substance prescription is dispensed to the person;
- 16 ▶ allows the person to direct the division to discontinue providing the information;
- 17 ▶ requires that the division advise the person that if the person discontinues the
- 18 notification, the third party will be advised of the discontinuance;
- 19 ▶ requires that the division comply with the direction and also notify the third party of
- 20 the discontinuation; and
- 21 ▶ authorizes the division to make administrative rules to facilitate implementation of
- 22 this provision.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **58-37f-301**, as last amended by Laws of Utah 2015, Chapters 89, 326, and 336

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

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

58-37f-301. Access to database.

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

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

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

(i) whom the 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; or

(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;

58 (d) in accordance with a written agreement entered into with the department, a
59 designee of the director of the Department of Health, who is not an employee of the
60 Department of Health, whom the director of the Department of Health assigns to conduct
61 scientific studies regarding the use or abuse of controlled substances pursuant to an application
62 process established in rule by the Department of Health, if:

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

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

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

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

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

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

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

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

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

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

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

85 (B) limit the authorized employee of the managed care organization to requesting either

86 the division or the Department of Health to conduct a search of the database regarding a
87 specific Medicaid enrollee and to report the results of the search to the authorized employee;
88 and

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

93 (f) a licensed practitioner having authority to prescribe controlled substances, to the
94 extent the information:

95 (i) (A) relates specifically to a current or prospective patient of the practitioner; and
96 (B) is provided to or sought by the practitioner for the purpose of:

97 (I) prescribing or considering prescribing any controlled substance to the current or
98 prospective patient;

99 (II) diagnosing the current or prospective patient;

100 (III) providing medical treatment or medical advice to the current or prospective
101 patient; or

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

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

104 or

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

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

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

111 (iii) relates specifically to an individual who has access to the practitioner's Drug
112 Enforcement Administration identification number, and the practitioner suspects that the
113 individual may have used the practitioner's Drug Enforcement Administration identification

114 number to fraudulently acquire or prescribe a controlled substance;

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

116 prohibited by the division by administrative rule;

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

118 practitioner, described in Subsection (2)(g); or

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

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

121 controlled substance;

122 (g) in accordance with Subsection (3)(a), an employee of a practitioner described in

123 Subsection (2)(f), for a purpose described in Subsection (2)(f)(i) or (ii), if:

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

125 the information on behalf of the practitioner;

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

127 employee; and

128 (iii) the division:

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

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

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

132 [58-37f-203\(5\)](#) with respect to the employee;

133 (h) an employee of the same business that employs a licensed practitioner under

134 Subsection (2)(f) if:

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

136 the information on behalf of the practitioner;

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

138 the identity of the designated employee; and

139 (iii) the division:

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

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

142 the database in order to permit the division to comply with the requirements of Subsection
143 [58-37f-203\(5\)](#) with respect to the employee;

144 (i) a licensed pharmacist having authority to dispense a controlled substance to the
145 extent the information is provided or sought for the purpose of:

146 (i) dispensing or considering dispensing any controlled substance; or

147 (ii) determining whether a person:

148 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

149 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
150 substance from the pharmacist;

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

154 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
155 to access the information on behalf of a licensed pharmacist employed by the pharmacy;

156 (ii) the pharmacist-in-charge provides written notice to the division of the identity of
157 the employee; and

158 (iii) the division:

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

160 (B) provides the employee with a password that is unique to that employee to access
161 the database in order to permit the division to comply with the requirements of Subsection

162 [58-37f-203\(5\)](#) with respect to the employee;

163 (k) pursuant to a valid search warrant, federal, state, and local law enforcement
164 agencies and state and local prosecutors that are engaged in an investigation related to:

165 (i) one or more controlled substances; and

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

167 (l) employees of the Office of Internal Audit and Program Integrity within the
168 Department of Health who are engaged in their specified duty of ensuring Medicaid program
169 integrity under Section [26-18-2.3](#);

- 170 (m) a mental health therapist, if:
- 171 (i) the information relates to a patient who is:
- 172 (A) enrolled in a licensed substance abuse treatment program; and
- 173 (B) receiving treatment from, or under the direction of, the mental health therapist as
- 174 part of the patient's participation in the licensed substance abuse treatment program described
- 175 in Subsection (2)(m)(i)(A);
- 176 (ii) the information is sought for the purpose of determining whether the patient is
- 177 using a controlled substance while the patient is enrolled in the licensed substance abuse
- 178 treatment program described in Subsection (2)(m)(i)(A); and
- 179 (iii) the licensed substance abuse treatment program described in Subsection
- 180 (2)(m)(i)(A) is associated with a practitioner who:
- 181 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
- 182 pharmacist; and
- 183 (B) is available to consult with the mental health therapist regarding the information
- 184 obtained by the mental health therapist, under this Subsection (2)(m), from the database;
- 185 (n) an individual who is the recipient of a controlled substance prescription entered into
- 186 the database, upon providing evidence satisfactory to the division that the individual requesting
- 187 the information is in fact the individual about whom the data entry was made;
- 188 (o) an individual under Subsection (2)(n) for the purpose of obtaining a list of the
- 189 persons and entities that have requested or received any information from the database
- 190 regarding the individual, except if the individual's record is subject to a pending or current
- 191 investigation as authorized under this Subsection (2);
- 192 (p) the inspector general, or a designee of the inspector general, of the Office of
- 193 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
- 194 Title 63A, Chapter 13, Part 2, Office and Powers; and
- 195 (q) the following licensed physicians for the purpose of reviewing and offering an
- 196 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
- 197 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

198 (i) a member of the medical panel described in Section 34A-2-601;
199 (ii) a physician employed as medical director for a licensed workers' compensation
200 insurer or an approved self-insured employer; or
201 (iii) a physician offering a second opinion regarding treatment.
202 (3) (a) (i) A practitioner described in Subsection (2)(f) may designate up to three
203 employees to access information from the database under Subsection (2)(g), (2)(h), or (4)(c).
204 (ii) A pharmacist described in Subsection (2)(i) who is a pharmacist-in-charge may
205 designate up to five employees to access information from the database under Subsection (2)(j).
206 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
207 Administrative Rulemaking Act, to:
208 (i) establish background check procedures to determine whether an employee
209 designated under Subsection (2)(g), (2)(h), or (4)(c) should be granted access to the database;
210 [and]
211 (ii) establish the information to be provided by an emergency room employee under
212 Subsection (4)[:]; and
213 (iii) facilitate providing controlled substance prescription information to a third party
214 under Subsection (5).
215 (c) The division shall grant an employee designated under Subsection (2)(g), (2)(h), or
216 (4)(c) access to the database, unless the division determines, based on a background check, that
217 the employee poses a security risk to the information contained in the database.
218 (4) (a) An individual who is employed in the emergency room of a hospital may
219 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
220 the individual is designated under Subsection (4)(c) and the licensed practitioner:
221 (i) is employed in the emergency room;
222 (ii) is treating an emergency room patient for an emergency medical condition; and
223 (iii) requests that an individual employed in the emergency room and designated under
224 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
225 course of treatment.

226 (b) The emergency room employee obtaining information from the database shall,
227 when gaining access to the database, provide to the database the name and any additional
228 identifiers regarding the requesting practitioner as required by division administrative rule
229 established under Subsection (3)(b).

230 (c) An individual employed in the emergency room under this Subsection (4) may
231 obtain information from the database as provided in Subsection (4)(a) if:

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

234 (ii) the practitioner and the hospital operating the emergency room provide written
235 notice to the division of the identity of the designated employee; and

236 (iii) the division:

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

238 (B) provides the employee with a password that is unique to that employee to access
239 the database in order to permit the division to comply with the requirements of Subsection
240 [58-37f-203\(5\)](#) with respect to the employee.

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

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

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

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

253 (i) the fact a controlled substance has been dispensed to the individual, but without

254 identifying the controlled substance; and

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

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

258 (ii) The division shall:

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

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

262 ~~[(5)]~~ (6) (a) An individual who is granted access to the database based on the fact that
263 the individual is a licensed practitioner or a mental health therapist shall be denied access to the
264 database when the individual is no longer licensed.

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