

HB 265 <https://le.utah.gov/~2021/bills/static/HB0265.html>

HB 177 (2020) <https://le.utah.gov/~2020/bills/static/HB0177.html> Rule discussion

R156. Commerce, Occupational and Professional Licensing. R156-37. Utah Controlled Substances Act Rule.

R156-37-101. Title.

This rule is known as the "Utah Controlled Substances Act Rule."

R156-37-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or this rule:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

(2) "Electronic failure" means loss of electrical power or internet service.

(3) "Emergency situation," as used in Subsection 58-37-22(1)(e), is defined for the purpose of permitting the dispensing of any controlled substance prescription, and means a situation in which the practitioner who intends to prescribe a controlled substance or pharmacist who intends to dispense a controlled substance determined the following:

(a) the immediate dispensing of the controlled substance is necessary for the proper treatment of the ultimate user;

(b) no appropriate alternative treatment is available; and

(c) it is not reasonably possible for the prescribing practitioner to electronically transmit a prescription.

(4) "Exemption" as used in Subsection 58-37-22 (2)(c), in this section means the prescriber or pharmacy may be exempt from utilizing electronic prescribing methods for controlled substances and shall document on the hard copy one of the following reasons:

(a) compounding medications; or

(b) out of state prescribers.

(5) "Exempt controlled substance waiver" means the waiver category provided by the Division to the prescriber or pharmacy after an exemption approval, which is valid for one year from date of issuance.

(6) "Forward" in this section, means an original unfilled electronic controlled substance prescription.

~~{2}~~ (7) "NABP" means the National Association of Boards of Pharmacy.

~~[(3)]~~ (8) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.

~~[(4)]~~ (9) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2) (b)(iii).

(10) "Transfer" in this section, means an original prescription is at the originating pharmacy. The balance of refills were transferred to a different pharmacy.

~~[(5)]~~ (11) "SBIRT training" means training in the Screening, Brief Intervention, and Referral to Treatment approach used by the federal Substance Abuse and Mental Health Services Administration, as defined in Subsection 58-37-6.5(1)~~(e) and~~(3).

(12) "Technical difficulty" means a failure of a computer system, application, device, or any other service interruption to a computer system in such a manner that it reasonably prevents;
(a) a practitioner from transmitting or from a pharmacy receiving an electronic controlled substance prescription to a pharmacy; or
(b) a pharmacy from transmitting an electronic controlled substance prescription forward or transfer to a different pharmacy in accordance with Subsection 58-37-22 (3).

~~[(6)]~~ (13) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(1)(e) and 58-37-6(1)(a), in Section R156-37-502.

R156-37-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) a licensee with authority to prescribe or administer controlled substances:
 - (a) prescribing or administering to oneself any Schedule II or III controlled substance that is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;
 - (b) prescribing or administering a controlled substance for a condition that the prescriber is not licensed or competent to treat;
 - (2) violating any federal or state law relating to controlled substances;
 - (3) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action that revokes, suspends or limits the license;
 - (4) failing to maintain controls over controlled substances that would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;
 - (5) being unable to account for shortages of any controlled substance inventory for which the licensee has responsibility;

- (6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1) (s), except for legitimate medical purposes as permitted by law;
- (7) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records;
- (8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so; or
- (9) failing to obtain a DEA registration within the time frame established in Section R156-37-305.

(10) As a prescriber, failing to seek to correct any cause for failure that is reasonable within their control for an electronic failure.

(11) As a prescriber, failing to seek to correct any cause for failure that is reasonable within their control for a technical difficulty.

(12) As a prescriber, failing to deliver the emergency prescription for a controlled substance to a pharmacy within 7 days.

(13) As a pharmacy, failing to seek to correct any cause for failure that is reasonable within their control for an electronic failure.

(14) As a pharmacy, failing to seek to correct any cause for failure that is reasonable within their control for a technical difficulty.

(15) As a pharmacy, failing to notify the Division that a prescriber failed to deliver a prescription for an oral emergency controlled substance within 7 days.

R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.

- (1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:
 - (a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;
 - (b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and
 - (c) a written prescription is delivered to the pharmacist within **seven** working days of the verbal order.
- (2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:
 - (a) the amount does not exceed a 72 hour supply; and

- (b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

R156-37-609. Electronic prescriptions for controlled substances

- (1) In accordance with Section 58-37-22, each prescription for a controlled substance shall be transmitted electronically unless the prescription meets criteria in subsections 58-37-22(1)(a) through (e).
- (2) A pharmacist may dispense a controlled substance upon receiving the oral or written authorization from a prescribing practitioner, provided that:
- (a) the prescription order is in accordance with Section 58-17b-602 and Section R156-37-306;
 - (i) in an emergency situation, as defined in Subsection R156-37-102(2) or an exemption as defined in R156-37-102 (4), the prescriber or pharmacist shall document on the hard copy prescription the reason for the written controlled substance could not be electronically prescribed, in accordance with Subsection 58-37-22(2)(a).
- (6) In accordance with Section 58-37-22 (2)(e) , the originating pharmacy, forwarding an unfilled electronic controlled substance shall:
- (a) Contact the patient or patients agent to determine where the pharmacy should electronically forward the prescription;
 - (b) void the forward prescription; and
 - (c) document in the automated pharmacy system the pharmacy where the forward prescription was sent to.
 - (d) If the originating pharmacy is unable to forward the prescription the pharmacy shall:
 - (i) Contact the prescriber and indicate the pharmacy is unable to fill and forward the controlled substance prescription;
 - (ii) document in the automated pharmacy system who was contacted at the prescribing office; and
 - (iii) void the prescription.
 - (e) The prescriber may electronically submit a new prescription to a different pharmacy when the pharmacy is unable to forward a controlled substance prescription.
- (7) Electronic prescriptions shall comply with federal laws and regulations for software used to issue and dispense electronic prescriptions in accordance with CFR Title 21 Chapter 1311.

R156-37-610 Exempt controlled substance license waiver category

- (1) In accordance with Subsection 58-37-22 (2)(d), a prescriber or pharmacy that is unable to comply with Subsection 58-37-22 (1) may apply for an exempt controlled substance waiver, as defined in Section R156-37-102(5), for up to two years, on a form provided by the Division. An application shall include the following:
- (a) name and address of the prescriber or pharmacy and license numbers;
 - (b) current electronic prescribing capabilities;
 - (c) the reason, such as economic hardship, technological difficulties, electronic failures or other exceptional circumstances;
 - (d) supporting documentation to justify the reason for the exemption, including:

(i) For economic hardship;

(A) a copy of the prescribers or pharmacy's most recent tax return showing annual income.

(B) two quotes documenting the cost of implementation.

(ii) For technological difficulties;

(A) current available internet service providers, the speed and bandwidth available for the internet service providers and any data caps imposed by the internet service providers

(B) documentation showing the minimum technological requirements from at least two electronic prescribing vending platform vendors; and

(C) anticipated date of compliance with Section 58-37-22.

(2) The Division shall consider all information provided for an exempt controlled substance waiver category and shall approve or deny an application based on the following criteria;

(a) For economic hardship, whether the cost of compliance with Section 58-37-22 would exceed 5 percent of the prescriber or pharmacy's annual income as reported on the most recent tax return.

(b) For technological difficulties, whether the internet service providers available have the technological capabilities required by the electronic prescribing platform.

(a) For exceptional circumstances, the following may be considered but are not limited to, the pharmacy or prescriber;

(i) Is a free or low income facility;

(ii) Filed bankruptcy in the previous year;

(iii) Intends to discontinue practice by January 1, 2024;

(iv) Has a disability that limits the ability to utilize an electronic prescribing platform; or

(v) any other circumstance which shall be evaluated on a case-by-case basis.

(3) If the prescriber or pharmacy seeks a renewal of the approved exempt controlled substance license, the following will shall be provided to the Division 60 days prior to the expiration;

(a) Updated information in Subsection R156-37-610 (1);

(b) Information relating to the prescriber or pharmacy's actions during the previous exemption period to work toward compliance with Section 58-37-22; or

(c) An explanation as to why no progress has been made.

KEY: controlled substances, licensing

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Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37-6(1)(a); 58-37f-301(1)