

1 **CONTROLLED SUBSTANCE DATABASE MODIFICATIONS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Evan J. Vickers**

5 House Sponsor: Bradley G. Last

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Controlled Substance Database Act regarding access by pharmacy
10 technicians.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ allows the pharmacist-in-charge to designate a licensed pharmacy technician to have
14 access to the database on behalf of the pharmacist in accordance with statutory
15 requirements.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **58-37f-301**, as last amended by Laws of Utah 2013, Chapters 12, 130, and 262

23

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

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

26 **58-37f-301. Access to database.**

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

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

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

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

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

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

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

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

- 59 (A) fit within the responsibilities of the Department of Health for health and welfare;
- 60 (B) are reviewed and approved by an Institutional Review Board that is approved for
- 61 human subject research by the United States Department of Health and Human Services; and
- 62 (C) are not conducted for profit or commercial gain; and
- 63 (D) are conducted in a research facility, as defined by division rule, that is associated
- 64 with a university or college in the state accredited by the Northwest Commission on Colleges
- 65 and Universities;
- 66 (iii) the designee protects the information as a business associate of the Department of
- 67 Health; and
- 68 (iv) the identity of the prescribers, patients, and pharmacies in the database are
- 69 de-identified, confidential, not disclosed in any manner to the designee or to any individual
- 70 who is not directly involved in the scientific studies;
- 71 (e) a licensed practitioner having authority to prescribe controlled substances, to the
- 72 extent the information:
- 73 (i) (A) relates specifically to a current or prospective patient of the practitioner; and
- 74 (B) is provided to or sought by the practitioner for the purpose of:
- 75 (I) prescribing or considering prescribing any controlled substance to the current or
- 76 prospective patient;
- 77 (II) diagnosing the current or prospective patient;
- 78 (III) providing medical treatment or medical advice to the current or prospective
- 79 patient; or
- 80 (IV) determining whether the current or prospective patient:
- 81 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;
- 82 or
- 83 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
- 84 substance from the practitioner;
- 85 (ii) (A) relates specifically to a former patient of the practitioner; and
- 86 (B) is provided to or sought by the practitioner for the purpose of determining whether
- 87 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
- 88 controlled substance from the practitioner;
- 89 (iii) relates specifically to an individual who has access to the practitioner's Drug

90 Enforcement Administration identification number, and the practitioner suspects that the
91 individual may have used the practitioner's Drug Enforcement Administration identification
92 number to fraudulently acquire or prescribe a controlled substance;

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

95 (v) relates to the use of the controlled substance database by an employee of the
96 practitioner, described in Subsection (2)(f); or

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

100 (f) in accordance with Subsection (3)(a), an employee of a practitioner described in
101 Subsection (2)(e), for a purpose described in Subsection (2)(e)(i) or (ii), if:

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

104 (ii) the practitioner provides written notice to the division of the identity of the
105 employee; and

106 (iii) the division:

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

108 (B) provides the employee with a password that is unique to that employee to access
109 the database in order to permit the division to comply with the requirements of Subsection
110 58-37f-203(3)(b) with respect to the employee;

111 (g) an employee of the same business that employs a licensed practitioner under
112 Subsection (2)(e) if:

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

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

117 (iii) the division:

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

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

- 121 58-37f-203(3)(b) with respect to the employee;
- 122 (h) a licensed pharmacist having authority to dispense a controlled substance to the
- 123 extent the information is provided or sought for the purpose of:
- 124 (i) dispensing or considering dispensing any controlled substance; or
- 125 (ii) determining whether a person:
- 126 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
- 127 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
- 128 substance from the pharmacist;
- 129 (i) in accordance with Subsection (3)(a), a licensed pharmacy technician who is an
- 130 employee of a pharmacy as defined in Section 58-17b-102, for the purposes described in
- 131 Subsection (2)(h)(i) or (ii), if:
- 132 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
- 133 to access the information on behalf of a licensed pharmacist employed by the pharmacy;
- 134 (ii) the pharmacist-in-charge provides written notice to the division of the identity of
- 135 the employee; and
- 136 (iii) the division:
- 137 (A) grants the employee access to the database; and
- 138 (B) provides the employee with a password that is unique to that employee to access
- 139 the database in order to permit the division to comply with the requirements of Subsection
- 140 58-37f-203(3)(b) with respect to the employee;
- 141 ~~(j)~~ (j) federal, state, and local law enforcement authorities, and state and local
- 142 prosecutors, engaged as a specified duty of their employment in enforcing laws:
- 143 (i) regulating controlled substances;
- 144 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; or
- 145 (iii) providing information about a criminal defendant to defense counsel, upon request
- 146 during the discovery process, for the purpose of establishing a defense in a criminal case;
- 147 ~~(k)~~ (k) employees of the Office of Internal Audit and Program Integrity within the
- 148 Department of Health who are engaged in their specified duty of ensuring Medicaid program
- 149 integrity under Section 26-18-2.3;
- 150 ~~(l)~~ (l) a mental health therapist, if:
- 151 (i) the information relates to a patient who is:

152 (A) enrolled in a licensed substance abuse treatment program; and
153 (B) receiving treatment from, or under the direction of, the mental health therapist as
154 part of the patient's participation in the licensed substance abuse treatment program described
155 in Subsection (2)(k)(i)(A);

156 (ii) the information is sought for the purpose of determining whether the patient is
157 using a controlled substance while the patient is enrolled in the licensed substance abuse
158 treatment program described in Subsection (2)(k)(i)(A); and

159 (iii) the licensed substance abuse treatment program described in Subsection
160 (2)(k)(i)(A) is associated with a practitioner who:

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

163 (B) is available to consult with the mental health therapist regarding the information
164 obtained by the mental health therapist, under this Subsection (2)(k), from the database;

165 ~~(†)~~ (m) an individual who is the recipient of a controlled substance prescription
166 entered into the database, upon providing evidence satisfactory to the division that the
167 individual requesting the information is in fact the individual about whom the data entry was
168 made;

169 ~~(†)~~ (n) the inspector general, or a designee of the inspector general, of the Office of
170 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
171 Title 63A, Chapter 13, Part 2, Office and Powers; and

172 ~~(†)~~ (o) the following licensed physicians for the purpose of reviewing and offering an
173 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
174 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

176 (ii) a physician offering a second opinion regarding treatment.

177 (3) (a) A practitioner described in Subsection (2)(e) may designate up to three
178 employees to access information from the database under Subsection (2)(f), (2)(g), (2)(i), or
179 (4)(c).

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

182 (i) establish background check procedures to determine whether an employee

183 designated under Subsection (2)(f), (2)(g), or (4)(c) should be granted access to the database;
184 and

185 (ii) establish the information to be provided by an emergency room employee under
186 Subsection (4).

187 (c) The division shall grant an employee designated under Subsection (2)(f), (2)(g), or
188 (4)(c) access to the database, unless the division determines, based on a background check, that
189 the employee poses a security risk to the information contained in the database.

190 (4) (a) An individual who is employed in the emergency room of a hospital may
191 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
192 the individual is designated under Subsection (4)(c) and the licensed practitioner:

193 (i) is employed in the emergency room;

194 (ii) is treating an emergency room patient for an emergency medical condition; and

195 (iii) requests that an individual employed in the emergency room and designated under
196 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
197 course of treatment.

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

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

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

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

208 (iii) the division:

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

210 (B) provides the employee with a password that is unique to that employee to access
211 the database in order to permit the division to comply with the requirements of Subsection
212 58-37f-203(3)(b) with respect to the employee.

213 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a

214 practitioner who designates an employee under Subsection (2)(f), (2)(g), or (4)(c) to pay for the
215 costs incurred by the division to conduct the background check and make the determination
216 described in Subsection (3)(b).

217 (5) (a) An individual who is granted access to the database based on the fact that the
218 individual is a licensed practitioner or a mental health therapist shall be denied access to the
219 database when the individual is no longer licensed.

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

Legislative Review Note
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Office of Legislative Research and General Counsel