

CONTROLLED SUBSTANCE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill modifies the Utah Controlled Substances Act.

Highlighted Provisions:

This bill:

- ▶ removes an exception to the 7-day limit on prescriptions for certain controlled substances after a surgery; and
- ▶ requires a practitioner to check the controlled substance database and consult with other practitioners when issuing a long-term prescription for an opiate or a benzodiazepine under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37-6, as last amended by Laws of Utah 2020, Chapter 81

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

Section 1. Section **58-37-6** is amended to read:

58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.

30 (1) (a) The division may adopt rules relating to the licensing and control of the
31 manufacture, distribution, production, prescription, administration, dispensing, conducting of
32 research with, and performing of laboratory analysis upon controlled substances within this
33 state.

34 (b) The division may assess reasonable fees to defray the cost of issuing original and
35 renewal licenses under this chapter pursuant to Section 63J-1-504.

36 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
37 administers, conducts research with, or performs laboratory analysis upon any controlled
38 substance in Schedules I through V within this state, or who proposes to engage in
39 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting
40 research with, or performing laboratory analysis upon controlled substances included in
41 Schedules I through V within this state shall obtain a license issued by the division.

42 (ii) The division shall issue each license under this chapter in accordance with a
43 two-year renewal cycle established by rule. The division may by rule extend or shorten a
44 renewal period by as much as one year to stagger the renewal cycles it administers.

45 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
46 administer, conduct research with, or perform laboratory analysis upon controlled substances in
47 Schedules I through V within this state may possess, manufacture, produce, distribute,
48 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
49 those substances to the extent authorized by their license and in conformity with this chapter.

50 (c) The following persons are not required to obtain a license and may lawfully possess
51 controlled substances included in Schedules II through V under this section:

52 (i) an agent or employee, except a sales representative, of any registered manufacturer,
53 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
54 usual course of the agent or employee's business or employment; however, nothing in this
55 subsection shall be interpreted to permit an agent, employee, sales representative, or detail man
56 to maintain an inventory of controlled substances separate from the location of the person's
57 employer's registered and licensed place of business;

58 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
59 warehouseman, who possesses a controlled substance in the usual course of the person's
60 business or employment; and

61 (iii) an ultimate user, or a person who possesses any controlled substance pursuant to a
62 lawful order of a practitioner.

63 (d) The division may enact rules waiving the license requirement for certain
64 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
65 practitioners, or laboratories performing analysis if waiving the license requirement is
66 consistent with public health and safety.

67 (e) A separate license is required at each principal place of business or professional
68 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
69 with, or performs laboratory analysis upon controlled substances.

70 (f) The division may enact rules providing for the inspection of a licensee or applicant's
71 establishment, and may inspect the establishment according to those rules.

72 (3) (a) (i) Upon proper application, the division shall license a qualified applicant to
73 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
74 controlled substances included in Schedules I through V, unless it determines that issuance of a
75 license is inconsistent with the public interest.

76 (ii) The division may not issue a license to any person to prescribe, dispense, or
77 administer a Schedule I controlled substance except under Subsection (3)(a)(i).

78 (iii) In determining public interest under this Subsection (3)(a), the division shall
79 consider whether the applicant has:

80 (A) maintained effective controls against diversion of controlled substances and any
81 Schedule I or II substance compounded from any controlled substance into channels other than
82 legitimate medical, scientific, or industrial channels;

83 (B) complied with applicable state and local law;

84 (C) been convicted under federal or state laws relating to the manufacture, distribution,
85 or dispensing of substances;

86 (D) past experience in the manufacture of controlled dangerous substances;
87 (E) established effective controls against diversion; and
88 (F) complied with any other factors that the division establishes that promote the public
89 health and safety.

90 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
91 produce, distribute, conduct research with, or perform laboratory analysis upon controlled
92 substances in Schedule I other than those specified in the license.

93 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
94 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
95 research under the laws of this state.

96 (ii) The division need not require a separate license for practitioners engaging in
97 research with nonnarcotic controlled substances in Schedules II through V where the licensee is
98 already licensed under this chapter in another capacity.

99 (iii) With respect to research involving narcotic substances in Schedules II through V,
100 or where the division by rule requires a separate license for research of nonnarcotic substances
101 in Schedules II through V, a practitioner shall apply to the division prior to conducting
102 research.

103 (iv) Licensing for purposes of bona fide research with controlled substances by a
104 practitioner considered qualified may be denied only on a ground specified in Subsection (4),
105 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard
106 adequately the practitioner's supply of substances against diversion from medical or scientific
107 use.

108 (v) Practitioners registered under federal law to conduct research in Schedule I
109 substances may conduct research in Schedule I substances within this state upon providing the
110 division with evidence of federal registration.

111 (d) Compliance by manufacturers, producers, and distributors with the provisions of
112 federal law respecting registration, excluding fees, entitles them to be licensed under this
113 chapter.

114 (e) The division shall initially license those persons who own or operate an
115 establishment engaged in the manufacture, production, distribution, dispensation, or
116 administration of controlled substances prior to April 3, 1980, and who are licensed by the
117 state.

118 (4) (a) Any license issued pursuant to Subsection (2) or (3) may be denied, suspended,
119 placed on probation, or revoked by the division upon finding that the applicant or licensee has:

120 (i) materially falsified any application filed or required pursuant to this chapter;

121 (ii) been convicted of an offense under this chapter or any law of the United States, or
122 any state, relating to any substance defined as a controlled substance;

123 (iii) been convicted of a felony under any other law of the United States or any state
124 within five years of the date of the issuance of the license;

125 (iv) had a federal registration or license denied, suspended, or revoked by competent
126 federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense
127 controlled substances;

128 (v) had the licensee's license suspended or revoked by competent authority of another
129 state for violation of laws or regulations comparable to those of this state relating to the
130 manufacture, distribution, or dispensing of controlled substances;

131 (vi) violated any division rule that reflects adversely on the licensee's reliability and
132 integrity with respect to controlled substances;

133 (vii) refused inspection of records required to be maintained under this chapter by a
134 person authorized to inspect them; or

135 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the
136 purpose of manipulating human hormonal structure so as to:

137 (A) increase muscle mass, strength, or weight without medical necessity and without a
138 written prescription by any practitioner in the course of the practitioner's professional practice;

139 or

140 (B) improve performance in any form of human exercise, sport, or game.

141 (b) The division may limit revocation or suspension of a license to a particular

142 controlled substance with respect to which grounds for revocation or suspension exist.

143 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
144 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
145 Occupational and Professional Licensing Act, and conducted in conjunction with the
146 appropriate representative committee designated by the director of the department.

147 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
148 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
149 except where the division is designated by law to perform those functions, or, when not
150 designated by law, is designated by the executive director of the Department of Commerce to
151 conduct the proceedings.

152 (d) (i) The division may suspend any license simultaneously with the institution of
153 proceedings under this section if it finds there is an imminent danger to the public health or
154 safety.

155 (ii) Suspension shall continue in effect until the conclusion of proceedings, including
156 judicial review, unless withdrawn by the division or dissolved by a court of competent
157 jurisdiction.

158 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
159 substances owned or possessed by the licensee may be placed under seal in the discretion of the
160 division.

161 (ii) Disposition may not be made of substances under seal until the time for taking an
162 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,
163 orders the sale of perishable substances and the proceeds deposited with the court.

164 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

165 (f) The division shall notify promptly the Drug Enforcement Administration of all
166 orders suspending or revoking a license and all forfeitures of controlled substances.

167 (g) If an individual's Drug Enforcement Administration registration is denied, revoked,
168 surrendered, or suspended, the division shall immediately suspend the individual's controlled
169 substance license, which shall only be reinstated by the division upon reinstatement of the

170 federal registration, unless the division has taken further administrative action under
171 Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled
172 substance license.

173 (5) (a) A person licensed under Subsection (2) or (3) shall maintain records and
174 inventories in conformance with the record keeping and inventory requirements of federal and
175 state law and any additional rules issued by the division.

176 (b) (i) A physician, dentist, naturopathic physician, veterinarian, practitioner, or other
177 individual who is authorized to administer or professionally use a controlled substance shall
178 keep a record of the drugs received by the individual and a record of all drugs administered,
179 dispensed, or professionally used by the individual otherwise than by a prescription.

180 (ii) An individual using small quantities or solutions or other preparations of those
181 drugs for local application has complied with this Subsection (5)(b) if the individual keeps a
182 record of the quantity, character, and potency of those solutions or preparations purchased or
183 prepared by the individual, and of the dates when purchased or prepared.

184 (6) Controlled substances in Schedules I through V may be distributed only by a
185 licensee and pursuant to an order form prepared in compliance with division rules or a lawful
186 order under the rules and regulations of the United States.

187 (7) (a) An individual may not write or authorize a prescription for a controlled
188 substance unless the individual is:

189 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state
190 or under the laws of another state having similar standards; and

191 (ii) licensed under this chapter or under the laws of another state having similar
192 standards.

193 (b) An individual other than a pharmacist licensed under the laws of this state, or the
194 pharmacist's licensed intern, as required by Sections [58-17b-303](#) and [58-17b-304](#), may not
195 dispense a controlled substance.

196 (c) (i) A controlled substance may not be dispensed without the written prescription of
197 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

198 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in
199 conformity with Subsection (7)(d).

200 (iii) In emergency situations, as defined by division rule, controlled substances may be
201 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms
202 designated by the division and filed by the pharmacy.

203 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with
204 Subsection (7)(d).

205 (d) Except for emergency situations designated by the division, an individual may not
206 issue, fill, compound, or dispense a prescription for a controlled substance unless the
207 prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic
208 signature of the prescriber as authorized by division rule, and contains the following
209 information:

210 (i) the name, address, and registry number of the prescriber;

211 (ii) the name, address, and age of the person to whom or for whom the prescription is
212 issued;

213 (iii) the date of issuance of the prescription; and

214 (iv) the name, quantity, and specific directions for use by the ultimate user of the
215 controlled substance.

216 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
217 controlled substance unless:

218 (i) the individual who writes the prescription is licensed under Subsection (2); and

219 (ii) the prescribed controlled substance is to be used in research.

220 (f) Except when administered directly to an ultimate user by a licensed practitioner,
221 controlled substances are subject to the restrictions of this Subsection (7)(f).

222 (i) A prescription for a Schedule II substance may not be refilled.

223 (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a
224 one-month's supply, as directed on the daily dosage rate of the prescriptions.

225 (iii) (A) [~~Except as provided in Subsection (7)(f)(iii)(B), a~~] A prescription for a

226 Schedule II or Schedule III controlled substance that is an opiate and that is issued for an acute
227 condition shall be completely or partially filled in a quantity not to exceed a seven-day supply
228 as directed on the daily dosage rate of the prescription.

229 ~~[(B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when~~
230 ~~the practitioner determined that a quantity exceeding seven days is needed, in which case the~~
231 ~~practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the~~
232 ~~practitioner.]~~

233 [(C)] (B) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or
234 chronic conditions which are documented as being complex or chronic in the medical record.

235 [(D)] (C) A pharmacist is not required to verify that a prescription is in compliance
236 with Subsection (7)(f)(iii).

237 (iv) A Schedule III or IV controlled substance may be filled only within six months of
238 issuance, and may not be refilled more than six months after the date of its original issuance or
239 be refilled more than five times after the date of the prescription unless renewed by the
240 practitioner.

241 (v) All other controlled substances in Schedule V may be refilled as the prescriber's
242 prescription directs, but they may not be refilled one year after the date the prescription was
243 issued unless renewed by the practitioner.

244 (vi) Any prescription for a Schedule II substance may not be dispensed if it is not
245 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
246 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
247 specified separately from the date of issue.

248 (vii) A practitioner may issue more than one prescription at the same time for the same
249 Schedule II controlled substance, but only under the following conditions:

250 (A) no more than three prescriptions for the same Schedule II controlled substance may
251 be issued at the same time;

252 (B) no one prescription may exceed a 30-day supply; and

253 (C) a second or third prescription shall include the date of issuance and the date for

254 dispensing.

255 (g) (i) Beginning January 1, 2022, each prescription issued for a controlled substance
256 shall be transmitted electronically as an electronic prescription unless the prescription is:

257 (A) for a patient residing in an assisted living facility as that term is defined in Section
258 [26-21-2](#), a long-term care facility as that term is defined in Section [58-31b-102](#), or a
259 correctional facility as that term is defined in Section [64-13-1](#);

260 (B) issued by a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice
261 Act;

262 (C) dispensed by a Department of Veterans Affairs pharmacy;

263 (D) issued during a temporary technical or electronic failure at the practitioner's or
264 pharmacy's location; or

265 (E) issued in an emergency situation.

266 (ii) The division, in collaboration with the appropriate boards that govern the licensure
267 of the licensees who are authorized by the division to prescribe or to dispense controlled
268 substances, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative
269 Rulemaking Act to:

270 (A) require that controlled substances prescribed or dispensed under Subsection
271 (7)(g)(i)(D) indicate on the prescription that the prescribing practitioner or the [~~pharmacy~~]
272 pharmacy is experiencing a technical difficulty or an electronic failure;

273 (B) define an emergency situation for purposes of Subsection (7)(g)(i)(E);

274 (C) establish additional exemptions to the electronic prescription requirements
275 established in this Subsection (7)(g);

276 (D) establish guidelines under which a prescribing practitioner or a pharmacy may
277 obtain an extension of up to two additional years to comply with Subsection (7)(g)(i);

278 (E) establish a protocol to follow if the pharmacy that receives the electronic
279 prescription is not able to fill the prescription; and

280 (F) establish requirements that comply with federal laws and regulations for software
281 used to issue and dispense electronic prescriptions.

282 (h) An order for a controlled substance in Schedules II through V for use by an
283 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this
284 Subsection (7) if the order is:

285 (i) issued or made by a prescribing practitioner who holds an unrestricted registration
286 with the federal Drug Enforcement Administration, and an active Utah controlled substance
287 license in good standing issued by the division under this section, or a medical resident who is
288 exempted from licensure under Subsection 58-1-307(1)(c);

289 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
290 practitioner designates the quantity ordered;

291 (iii) entered upon the record of the patient, the record is signed by the prescriber
292 affirming the prescriber's authorization of the order within 48 hours after filling or
293 administering the order, and the patient's record reflects the quantity actually administered; and

294 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within
295 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by
296 the hospital and the amount taken from the supply is administered directly to the patient
297 authorized to receive it.

298 (i) A practitioner licensed under this chapter may not prescribe, administer, or dispense
299 a controlled substance to a child, without first obtaining the consent required in Section
300 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases
301 of an emergency. For purposes of Subsection (7)(i), "child" has the same meaning as defined
302 in Section 78A-6-105, and "emergency" means any physical condition requiring the
303 administration of a controlled substance for immediate relief of pain or suffering.

304 (j) A practitioner licensed under this chapter may not prescribe or administer dosages
305 of a controlled substance in excess of medically recognized quantities necessary to treat the
306 ailment, malady, or condition of the ultimate user.

307 (k) A practitioner licensed under this chapter may not prescribe, administer, or
308 dispense any controlled substance to another person knowing that the other person is using a
309 false name, address, or other personal information for the purpose of securing the controlled

310 substance.

311 (l) A person who is licensed under this chapter to manufacture, distribute, or dispense a
312 controlled substance may not manufacture, distribute, or dispense a controlled substance to
313 another licensee or any other authorized person not authorized by this license.

314 (m) A person licensed under this chapter may not omit, remove, alter, or obliterate a
315 symbol required by this chapter or by a rule issued under this chapter.

316 (n) A person licensed under this chapter may not refuse or fail to make, keep, or
317 furnish any record notification, order form, statement, invoice, or information required under
318 this chapter.

319 (o) A person licensed under this chapter may not refuse entry into any premises for
320 inspection as authorized by this chapter.

321 (p) A person licensed under this chapter may not furnish false or fraudulent material
322 information in any application, report, or other document required to be kept by this chapter or
323 willfully make any false statement in any prescription, order, report, or record required by this
324 chapter.

325 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
326 violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to
327 a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of
328 any violations in accordance with Sections 58-1-106 and 58-1-108.

329 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) ~~in~~ into
330 the General Fund as a dedicated credit to be used by the division under Subsection
331 58-37f-502(1).

332 (iii) The director may collect a penalty that is not paid by:

333 (A) referring the matter to a collection agency; or

334 (B) bringing an action in the district court of the county where the person against
335 whom the penalty is imposed resides or in the county where the office of the director is located.

336 (iv) A county attorney or the attorney general of the state shall provide legal assistance
337 and advice to the director in an action to collect a penalty.

338 (v) A court shall award reasonable attorney fees and costs to the prevailing party in an
339 action brought by the division to collect a penalty.

340 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j)
341 or Subsection (10) is:

342 (i) upon first conviction, guilty of a class B misdemeanor;

343 (ii) upon second conviction, guilty of a class A misdemeanor; and

344 (iii) on third or subsequent conviction, guilty of a third degree felony.

345 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through
346 (o) shall upon conviction be guilty of a third degree felony.

347 (9) Any information communicated to any licensed practitioner in an attempt to
348 unlawfully procure, or to procure the administration of, a controlled substance is not considered
349 to be a privileged communication.

350 (10) A person holding a valid license under this chapter who is engaged in medical
351 research may produce, possess, administer, prescribe, or dispense a controlled substance for
352 research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense
353 a controlled substance listed in Section [58-37-4.2](#).

354 (11) (a) As used in this Subsection (11):

355 (i) "High risk prescription" means a prescription for an opiate or a benzodiazepine that
356 is written to continue for longer than 30 consecutive days.

357 (ii) "Database" means the controlled substance database created in Section [58-37f-201](#).

358 (b) A practitioner who issues a high risk prescription to a patient shall, before issuing
359 the high risk prescription to the patient, verify in the database that the patient does not have a
360 high risk prescription from a different practitioner that is currently active.

361 (c) If the database shows that the patient has received a high risk prescription that is
362 currently active from a different practitioner, the practitioner may not issue a high risk
363 prescription to the patient unless the practitioner:

364 (i) contacts and consults with each practitioner who issued a high risk prescription that
365 is currently active to the patient;

366 (ii) documents in the patient's medical record that the practitioner made contact with
367 each practitioner in accordance with Subsection (11)(c)(i); and

368 (iii) documents in the patient's medical record the reason why the practitioner believes
369 that the patient needs multiple high risk prescriptions from different practitioners.

370 (d) A practitioner shall satisfy the requirement described in Subsection (11)(c) in a
371 timely manner, which may be after the practitioner issues the high risk prescription to the
372 patient.