

Representative Edward H. Redd proposes the following substitute bill:

CONTROLLED SUBSTANCE DATABASE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions of the Controlled Substance Database Act.

Highlighted Provisions:

This bill:

▶ requires the Division of Occupational and Professional Licensing to implement options for:

- real-time submission of data into the controlled substance database; and
- 24-hour daily or next business day batch submission of data;

▶ requires a pharmacist to comply with the real-time or 24-hour submission requirements on and after January 1, 2016;

17a **Ŝ→ ▶ provides that a physician employed as medical director for a licensed workers' compensation insurer or an approved self-insured employer may have access to the database**
17b **regarding requests for workers' compensation;** ←Ŝ
17c

- ▶ authorizes additional rulemaking authority;
- ▶ repeals provisions of a pilot program; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2016:

- ▶ to the Department of Commerce - Division of Occupational and Professional Licensing - Controlled Substance Database, as an ongoing appropriation:
 - from the General Fund, \$46,000.



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **58-37f-203**, as last amended by Laws of Utah 2014, Chapter 72

31 **58-37f-301**, as last amended by Laws of Utah 2014, Chapters 68 and 401

32 REPEALS:

33 **58-37f-801**, as last amended by Laws of Utah 2013, Chapter 167



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

36 Section 1. Section **58-37f-203** is amended to read:

37 **58-37f-203. Submission, collection, and maintenance of data.**

38 (1) (a) The division shall implement on a statewide basis, including non-resident
39 pharmacies as defined in Section 58-17b-102, the following two options for a pharmacist to
40 submit information:

41 (i) real-time submission of the information required to be submitted under this part to
42 the controlled substance database; and

43 (ii) 24-hour daily or next business day, whichever is later, batch submission of the
44 information required to be submitted under this part to the controlled substance database.

45 (b) (i) On and after January 1, 2016, a pharmacist shall comply with either:

46 (A) the submission time requirements established by the division under Subsection

47 (1)(a)(i); or

48 (B) the submission time requirements established by the division under Subsection

49 (1)(a)(ii).

50 (ii) Prior to January 1, 2016, a pharmacist may submit information using either option
51 under this Subsection (1).

52 (c) The division shall comply with Title 63G, Chapter 6a, Utah Procurement Code.

53 ~~[(+)]~~ (2) (a) The pharmacist in charge of the drug outlet where a controlled substance is
54 dispensed shall submit the data described in this section to the division:

55 (i) in accordance with the requirements of this section;

56 (ii) in accordance with the procedures established by the division; and

57 (iii) in the format established by the division.

58 (b) A dispensing medical practitioner licensed under Chapter 17b, Part 8, Dispensing
59 Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, shall comply with
60 the provisions of this section and the dispensing medical practitioner shall assume the duties of
61 the pharmacist under this chapter.

62 ~~[(2)]~~ (3) The pharmacist described in Subsection ~~[(1)]~~ (2) shall, for each controlled
63 substance dispensed by a pharmacist under the pharmacist's supervision other than those
64 dispensed for an inpatient at a health care facility, submit to the division the following
65 information:

- 66 (a) the name of the prescribing practitioner;
- 67 (b) the date of the prescription;
- 68 (c) the date the prescription was filled;
- 69 (d) the name of the individual for whom the prescription was written;
- 70 (e) positive identification of the individual receiving the prescription, including the
71 type of identification and any identifying numbers on the identification;
- 72 (f) the name of the controlled substance;
- 73 (g) the quantity of the controlled substance prescribed;
- 74 (h) the strength of the controlled substance;
- 75 (i) the quantity of the controlled substance dispensed;
- 76 (j) the dosage quantity and frequency as prescribed;
- 77 (k) the name of the drug outlet dispensing the controlled substance;
- 78 (l) the name of the pharmacist dispensing the controlled substance; and
- 79 (m) other relevant information as required by division rule.

80 ~~[(3)]~~ (a) (4) The division shall make rules, in accordance with Title 63G, Chapter 3,
81 Utah Administrative Rulemaking Act, to establish submission requirements under this part,
82 including the electronic format in which the information required under this section shall be
83 submitted to the division.

84 ~~[(b)]~~ (5) The division shall ensure that the database system records and maintains for
85 reference:

86 ~~[(i)]~~ (a) the identification of each individual who requests or receives information from
87 the database;

88 [(ii)] (b) the information provided to each individual; and
89 [(iii)] (c) the date and time that the information is requested or provided.

90 Section 2. Section **58-37f-301** is amended to read:

91 **58-37f-301. Access to database.**

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

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

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

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

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

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

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

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

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

116 (d) in accordance with a written agreement entered into with the department, a
117 designee of the director of the Department of Health, who is not an employee of the
118 Department of Health, whom the director of the Department of Health assigns to conduct

119 scientific studies regarding the use or abuse of controlled substances pursuant to an application
120 process established in rule by the Department of Health, if:

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

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

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

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

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

128 (D) are conducted in a research facility, as defined by division rule, that is associated
129 with a university or college in the state accredited by [~~the Northwest Commission on Colleges
130 and Universities~~] one or more regional or national accrediting agencies recognized by the

131 United States Department of Education;

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

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

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

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

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

144 (B) limit the authorized employee of the managed care organization to requesting either
145 the division or the Department of Health to conduct a search of the database regarding a
146 specific Medicaid enrollee and to report the results of the search to the authorized employee;
147 and

148 (ii) the information is requested by an authorized employee of the managed care
149 organization in relation to a person who is enrolled in the Medicaid program with the managed

150 care organization, and the managed care organization suspects the person may be improperly
151 obtaining or providing a controlled substance;

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

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

156 (I) prescribing or considering prescribing any controlled substance to the current or
157 prospective patient;

158 (II) diagnosing the current or prospective patient;

159 (III) providing medical treatment or medical advice to the current or prospective
160 patient; or

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

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

163 or

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

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

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

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

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

176 (v) relates to the use of the controlled substance database by an employee of the
177 practitioner, described in Subsection (2)(g); or

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

181 (g) in accordance with Subsection (3)(a), an employee of a practitioner described in
182 Subsection (2)(f), for a purpose described in Subsection (2)(f)(i) or (ii), if:

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

185 (ii) the practitioner provides written notice to the division of the identity of the
186 employee; and

187 (iii) the division:

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

189 (B) provides the employee with a password that is unique to that employee to access
190 the database in order to permit the division to comply with the requirements of Subsection
191 58-37f-203[~~(3)~~(b)](5) with respect to the employee;

192 (h) an employee of the same business that employs a licensed practitioner under
193 Subsection (2)(f) if:

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

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

198 (iii) the division:

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

200 (B) provides the employee with a password that is unique to that employee to access
201 the database in order to permit the division to comply with the requirements of Subsection
202 58-37f-203[~~(3)~~(b)](5) with respect to the employee;

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

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

206 (ii) determining whether a person:

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

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

210 (j) in accordance with Subsection (3)(a), a licensed pharmacy technician who is an
211 employee of a pharmacy as defined in Section 58-17b-102, for the purposes described in

212 Subsection (2)(h)(i) or (ii), if:

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

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

217 (iii) the division:

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

219 (B) provides the employee with a password that is unique to that employee to access
220 the database in order to permit the division to comply with the requirements of Subsection
221 [58-37f-203\[\(3\)\(b\)\]\(5\)](#) with respect to the employee;

222 (k) federal, state, and local law enforcement authorities, and state and local
223 prosecutors, engaged as a specified duty of their employment in enforcing laws:

224 (i) regulating controlled substances;

225 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; or

226 (iii) providing information about a criminal defendant to defense counsel, upon request
227 during the discovery process, for the purpose of establishing a defense in a criminal case;

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

231 (m) a mental health therapist, if:

232 (i) the information relates to a patient who is:

233 (A) enrolled in a licensed substance abuse treatment program; and

234 (B) receiving treatment from, or under the direction of, the mental health therapist as
235 part of the patient's participation in the licensed substance abuse treatment program described
236 in Subsection (2)(m)(i)(A);

237 (ii) the information is sought for the purpose of determining whether the patient is
238 using a controlled substance while the patient is enrolled in the licensed substance abuse
239 treatment program described in Subsection (2)(m)(i)(A); and

240 (iii) the licensed substance abuse treatment program described in Subsection
241 (2)(m)(i)(A) is associated with a practitioner who:

242 (A) is a physician, a physician assistant, an advance practice registered nurse, or a

243 pharmacist; and

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

246 (n) an individual who is the recipient of a controlled substance prescription entered into
247 the database, upon providing evidence satisfactory to the division that the individual requesting
248 the information is in fact the individual about whom the data entry was made;

249 (o) the inspector general, or a designee of the inspector general, of the Office of
250 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
251 Title 63A, Chapter 13, Part 2, Office and Powers; and

252 (p) the following licensed physicians for the purpose of reviewing and offering an
253 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
254 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

255a **Ŝ→ (ii) a physician employed as medical director for a licensed workers' compensation**
255b **insurer or an approved self-insured employer; ←Ŝ or**

256 **Ŝ→ [(ii)] (iii) ←Ŝ** a physician offering a second opinion regarding treatment.

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

259 (ii) A pharmacist described in Subsection (2)(i) who is a pharmacist-in-charge may
260 designate up to three employees to access information from the database under Subsection
261 (2)(j).

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

264 (i) establish background check procedures to determine whether an employee
265 designated under Subsection (2)(g), (2)(h), or (4)(c) should be granted access to the database;
266 and

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

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

272 (4) (a) An individual who is employed in the emergency room of a hospital may
273 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if

274 the individual is designated under Subsection (4)(c) and the licensed practitioner:

- 275 (i) is employed in the emergency room;
 - 276 (ii) is treating an emergency room patient for an emergency medical condition; and
 - 277 (iii) requests that an individual employed in the emergency room and designated under
- 278 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
- 279 course of treatment.

280 (b) The emergency room employee obtaining information from the database shall,

281 when gaining access to the database, provide to the database the name and any additional

282 identifiers regarding the requesting practitioner as required by division administrative rule

283 established under Subsection (3)(b).

284 (c) An individual employed in the emergency room under this Subsection (4) may

285 obtain information from the database as provided in Subsection (4)(a) if:

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

287 the information on behalf of the practitioner;

288 (ii) the practitioner and the hospital operating the emergency room provide written

289 notice to the division of the identity of the designated employee; and

290 (iii) the division:

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

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

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

294 [58-37f-203\[\(3\)\(b\)\]\(5\)](#) with respect to the employee.

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

296 practitioner who designates an employee under Subsection (2)(g), (2)(h), or (4)(c) to pay for the

297 costs incurred by the division to conduct the background check and make the determination

298 described in Subsection (3)(b).

299 (5) (a) An individual who is granted access to the database based on the fact that the

300 individual is a licensed practitioner or a mental health therapist shall be denied access to the

301 database when the individual is no longer licensed.

302 (b) An individual who is granted access to the database based on the fact that the

303 individual is a designated employee of a licensed practitioner shall be denied access to the

304 database when the practitioner is no longer licensed.

305 Section 3. **Repealer.**

306 This bill repeals:

307 Section **58-37f-801, Pilot program for real-time reporting for controlled substance**
308 **database -- Statewide implementation.**

309 Section 4. **Appropriation.**

310 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
311 the fiscal year beginning July 1, 2015, and ending June 30, 2016, the following sums of money
312 are appropriated from resources not otherwise appropriated, or reduced from amounts
313 previously appropriated, out of the funds or accounts indicated. These sums of money are in
314 addition to any amounts previously appropriated for fiscal year 2016.

315 To Department of Commerce - Division of Occupational and Professional Licensing

316 From General Fund \$46,000

317 Schedule of Programs:

318 Controlled Substance Database \$46,000

319 Section 5. **Effective date.**

320 This bill takes effect on July 1, 2015.