

1                   **CONTROLLED SUBSTANCE DATABASE AMENDMENTS**

2                                   2011 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Curtis S. Bramble**

5                           House Sponsor: Bradley M. Daw

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies provisions relating to access to the Controlled Substance Database.

10 **Highlighted Provisions:**

11           This bill:

- 12           ▶ authorizes certain individuals to access the controlled substance database for the  
13 purpose of reviewing a patient's request for workers' compensation benefits; and  
14           ▶ makes technical changes.

15 **Money Appropriated in this Bill:**

16           None

17 **Other Special Clauses:**

18           This bill takes effect on January 1, 2012.

19 **Utah Code Sections Affected:**

20 AMENDS:

21           **58-37f-301**, as enacted by Laws of Utah 2010, Chapter 287 and last amended by  
22 Coordination Clause, Laws of Utah 2010, Chapter 312

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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 available only to the following  
34 individuals, in accordance with the requirements of this chapter and division rules:

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

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

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

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

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

49 (d) a licensed practitioner having authority to prescribe controlled substances, to the  
50 extent the information:

51 (i) (A) relates specifically to a current or prospective patient of the practitioner; and

52 (B) is sought by the practitioner for the purpose of:

53 (I) prescribing or considering prescribing any controlled substance to the current or  
54 prospective patient;

55 (II) diagnosing the current or prospective patient;

56 (III) providing medical treatment or medical advice to the current or prospective  
57 patient; or

58 (IV) determining whether the current or prospective patient:  
59 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;  
60 or  
61 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled  
62 substance from the practitioner;  
63 (ii) (A) relates specifically to a former patient of the practitioner; and  
64 (B) is sought by the practitioner for the purpose of determining whether the former  
65 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled  
66 substance from the practitioner;  
67 (iii) relates specifically to an individual who has access to the practitioner's Drug  
68 Enforcement Administration identification number, and the practitioner suspects that the  
69 individual may have used the practitioner's Drug Enforcement Administration identification  
70 number to fraudulently acquire or prescribe a controlled substance;  
71 (iv) relates to the practitioner's own prescribing practices, except when specifically  
72 prohibited by the division by administrative rule;  
73 (v) relates to the use of the controlled substance database by an employee of the  
74 practitioner, described in Subsection (2)(e); or  
75 (vi) relates to any use of the practitioner's Drug Enforcement Administration  
76 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a  
77 controlled substance;  
78 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in  
79 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:  
80 (i) the employee is designated by the practitioner as an individual authorized to access  
81 the information on behalf of the practitioner;  
82 (ii) the practitioner provides written notice to the division of the identity of the  
83 employee; and  
84 (iii) the division:  
85 (A) grants the employee access to the database; and

86 (B) provides the employee with a password that is unique to that employee to access  
87 the database in order to permit the division to comply with the requirements of Subsection  
88 58-37f-203(3)(b) with respect to the employee;

89 (f) a licensed pharmacist having authority to dispense a controlled substance to the  
90 extent the information is sought for the purpose of:

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

92 (ii) determining whether a person:

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

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

96 (g) federal, state, and local law enforcement authorities, and state and local  
97 prosecutors, engaged as a specified duty of their employment in enforcing laws:

98 (i) regulating controlled substances; or

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

100 (h) a mental health therapist, if:

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

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

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

106 (ii) the information is sought for the purpose of determining whether the patient is  
107 using a controlled substance while the patient is enrolled in the licensed substance abuse  
108 treatment program described in Subsection (2)(h)(i)(A); and

109 (iii) the licensed substance abuse treatment program described in Subsection  
110 (2)(h)(i)(A) is associated with a practitioner who:

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

113 (B) is available to consult with the mental health therapist regarding the information

114 obtained by the mental health therapist, under this Subsection (2)(h), from the database; [and]

115 (i) an individual who is the recipient of a controlled substance prescription entered into  
116 the database, upon providing evidence satisfactory to the division that the individual requesting  
117 the information is in fact the individual about whom the data entry was made[-];

118 (j) the following licensed physicians for the purpose of reviewing and offering an  
119 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter  
120 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

123 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three  
124 employees to access information from the database under Subsection (2)(e).

125 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
126 Administrative Rulemaking Act, to establish background check procedures to determine  
127 whether an employee designated under Subsection (2)(e)(i) should be granted access to the  
128 database.

129 (c) The division shall grant an employee designated under Subsection (2)(e)(i) access  
130 to the database, unless the division determines, based on a background check, that the  
131 employee poses a security risk to the information contained in the database.

132 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a  
133 practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs  
134 incurred by the division to conduct the background check and make the determination  
135 described in Subsection (3)(b).

136 (4) (a) An individual who is granted access to the database based on the fact that the  
137 individual is a licensed practitioner or a mental health therapist shall be denied access to the  
138 database when the individual is no longer licensed.

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

142           Section 2. **Effective date.**

143           This bill takes effect on January 1, 2012.