

**CONTROLLED SUBSTANCE DATABASE MODIFICATIONS**

2016 THIRD SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Daniel McCay

---

---

**LONG TITLE**

**General Description:**

This bill addresses access provisions of the Controlled Substance Database Act.

**Highlighted Provisions:**

This bill:

- describes the circumstances under which probation and parole officers may access information from the controlled substance database without a warrant.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**58-37f-301 (Effective 10/31/16)**, as last amended by Laws of Utah 2016, Chapters 104, 197, and 238

---

---

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

Section 1. Section **58-37f-301 (Effective 10/31/16)** is amended to read:

**58-37f-301 (Effective 10/31/16). Access to database.**

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

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

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

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

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

38 (ii) the following law enforcement officers, but the division may only provide  
39 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding  
40 individuals for whom a controlled substance has been prescribed or to whom a controlled  
41 substance has been dispensed:

42 (A) a law enforcement agency officer who is engaged in a joint investigation with the  
43 division; and

44 (B) a law enforcement agency officer to whom the division has referred a suspected  
45 criminal violation of controlled substance laws;

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

49 (c) a board member if:

50 (i) the board member is assigned to monitor a licensee on probation; and

51 (ii) the board member is limited to obtaining information from the database regarding  
52 the specific licensee on probation;

53 (d) a member of a diversion committee established in accordance with Subsection  
54 58-1-404(2) if:

55 (i) the diversion committee member is limited to obtaining information from the  
56 database regarding the person whose conduct is the subject of the committee's consideration;  
57 and

58 (ii) the conduct that is the subject of the committee's consideration includes a violation  
59 or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant  
60 violation or potential violation under this title;

61 (e) in accordance with a written agreement entered into with the department,  
62 employees of the Department of Health:

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

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

70 (iii) in the medical examiner's office;

71 (f) in accordance with a written agreement entered into with the department, a designee  
72 of the director of the Department of Health, who is not an employee of the Department of  
73 Health, whom the director of the Department of Health assigns to conduct scientific studies  
74 regarding the use or abuse of controlled substances pursuant to an application process  
75 established in rule by the Department of Health, if:

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

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

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

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

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

83 (D) are conducted in a research facility, as defined by division rule, that is associated  
84 with a university or college accredited by one or more regional or national accrediting agencies  
85 recognized by the United States Department of Education;

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

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

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

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

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

98 (B) limit the authorized employee of the managed care organization to requesting either  
99 the division or the Department of Health to conduct a search of the database regarding a  
100 specific Medicaid enrollee and to report the results of the search to the authorized employee;  
101 and

102 (ii) the information is requested by an authorized employee of the managed care  
103 organization in relation to a person who is enrolled in the Medicaid program with the managed  
104 care organization, and the managed care organization suspects the person may be improperly  
105 obtaining or providing a controlled substance;

106 (h) a licensed practitioner having authority to prescribe controlled substances, to the  
107 extent the information:

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

109 (B) is provided to or sought by the practitioner for the purpose of:

110 (I) prescribing or considering prescribing any controlled substance to the current or  
111 prospective patient;

112 (II) diagnosing the current or prospective patient;

113 (III) providing medical treatment or medical advice to the current or prospective

114 patient; or  
115 (IV) determining whether the current or prospective patient:  
116 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;  
117 or  
118 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled  
119 substance from the practitioner;  
120 (ii) (A) relates specifically to a former patient of the practitioner; and  
121 (B) is provided to or sought by the practitioner for the purpose of determining whether  
122 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a  
123 controlled substance from the practitioner;  
124 (iii) relates specifically to an individual who has access to the practitioner's Drug  
125 Enforcement Administration identification number, and the practitioner suspects that the  
126 individual may have used the practitioner's Drug Enforcement Administration identification  
127 number to fraudulently acquire or prescribe a controlled substance;  
128 (iv) relates to the practitioner's own prescribing practices, except when specifically  
129 prohibited by the division by administrative rule;  
130 (v) relates to the use of the controlled substance database by an employee of the  
131 practitioner, described in Subsection (2)(i); or  
132 (vi) relates to any use of the practitioner's Drug Enforcement Administration  
133 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a  
134 controlled substance;  
135 (i) in accordance with Subsection (3)(a), an employee of a practitioner described in  
136 Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:  
137 (i) the employee is designated by the practitioner as an individual authorized to access  
138 the information on behalf of the practitioner;  
139 (ii) the practitioner provides written notice to the division of the identity of the  
140 employee; and  
141 (iii) the division:

- 142 (A) grants the employee access to the database; and
- 143 (B) provides the employee with a password that is unique to that employee to access
- 144 the database in order to permit the division to comply with the requirements of Subsection
- 145 [58-37f-203\(5\)](#) with respect to the employee;
- 146 (j) an employee of the same business that employs a licensed practitioner under
- 147 Subsection (2)(h) if:
- 148 (i) the employee is designated by the practitioner as an individual authorized to access
- 149 the information on behalf of the practitioner;
- 150 (ii) the practitioner and the employing business provide written notice to the division of
- 151 the identity of the designated employee; and
- 152 (iii) the division:
- 153 (A) grants the employee access to the database; and
- 154 (B) provides the employee with a password that is unique to that employee to access
- 155 the database in order to permit the division to comply with the requirements of Subsection
- 156 [58-37f-203\(5\)](#) with respect to the employee;
- 157 (k) a licensed pharmacist having authority to dispense a controlled substance to the
- 158 extent the information is provided or sought for the purpose of:
- 159 (i) dispensing or considering dispensing any controlled substance; or
- 160 (ii) determining whether a person:
- 161 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
- 162 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
- 163 substance from the pharmacist;
- 164 (l) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy
- 165 intern who is an employee of a pharmacy as defined in Section [58-17b-102](#), for the purposes
- 166 described in Subsection (2)(j)(i) or (ii), if:
- 167 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
- 168 to access the information on behalf of a licensed pharmacist employed by the pharmacy;
- 169 (ii) the pharmacist-in-charge provides written notice to the division of the identity of

170 the employee; and

171 (iii) the division:

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

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

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

175 [58-37f-203\(5\)](#) with respect to the employee;

176 (m) pursuant to a valid search warrant, federal, state, and local law enforcement

177 officers and state and local prosecutors who are engaged in an investigation related to:

178 (i) one or more controlled substances; and

179 (ii) a specific person who is a subject of the investigation;

180 (n) subject to Subsection (7), a probation or parole officer, employed by the

181 Department of Corrections or by a political subdivision [~~who is not required to obtain a search~~

182 ~~warrant~~], to gain access to database information necessary for the officer's supervision of a

183 specific probationer or parolee who is under the officer's direct supervision;

184 (o) employees of the Office of Internal Audit and Program Integrity within the

185 Department of Health who are engaged in their specified duty of ensuring Medicaid program

186 integrity under Section [26-18-2.3](#);

187 (p) a mental health therapist, if:

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

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

190 (B) receiving treatment from, or under the direction of, the mental health therapist as

191 part of the patient's participation in the licensed substance abuse treatment program described

192 in Subsection (2)(p)(i)(A);

193 (ii) the information is sought for the purpose of determining whether the patient is

194 using a controlled substance while the patient is enrolled in the licensed substance abuse

195 treatment program described in Subsection (2)(p)(i)(A); and

196 (iii) the licensed substance abuse treatment program described in Subsection

197 (2)(p)(i)(A) is associated with a practitioner who:

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

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

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

205 (r) an individual under Subsection (2)(q) for the purpose of obtaining a list of the  
206 persons and entities that have requested or received any information from the database  
207 regarding the individual, except if the individual's record is subject to a pending or current  
208 investigation as authorized under this Subsection (2);

209 (s) the inspector general, or a designee of the inspector general, of the Office of  
210 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in  
211 Title 63A, Chapter 13, Part 2, Office and Powers; and

212 (t) the following licensed physicians for the purpose of reviewing and offering an  
213 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter  
214 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

215 (i) a member of the medical panel described in Section [34A-2-601](#);

216 (ii) a physician employed as medical director for a licensed workers' compensation  
217 insurer or an approved self-insured employer; or

218 (iii) a physician offering a second opinion regarding treatment.

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

221 (ii) A pharmacist described in Subsection (2)(k) who is a pharmacist-in-charge may  
222 designate up to five employees to access information from the database under Subsection (2)(l).

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

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



226 designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database;  
227 and

228 (ii) establish the information to be provided by an emergency room employee under  
229 Subsection (4); and

230 (iii) facilitate providing controlled substance prescription information to a third party  
231 under Subsection (5).

232 (c) The division shall grant an employee designated under Subsection (2)(i), (2)(j), or  
233 (4)(c) access to the database, unless the division determines, based on a background check, that  
234 the employee poses a security risk to the information contained in the database.

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

238 (i) is employed in the emergency room;

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

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

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

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

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

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

253 (iii) the division:

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

255 (B) provides the employee with a password that is unique to that employee to access  
256 the database in order to permit the division to comply with the requirements of Subsection  
257 58-37f-203(5) with respect to the employee.

258 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a  
259 practitioner who designates an employee under Subsection (2)(i), (2)(j), or (4)(c) to pay for the  
260 costs incurred by the division to conduct the background check and make the determination  
261 described in Subsection (3)(b).

262 (5) (a) (i) An individual may request that the division provide the information under  
263 Subsection (5)(b) to a third party who is designated by the individual each time a controlled  
264 substance prescription for the individual is dispensed.

265 (ii) The division shall upon receipt of the request under this Subsection (5)(a) advise  
266 the individual in writing that the individual may direct the division to discontinue providing the  
267 information to a third party and that notice of the individual's direction to discontinue will be  
268 provided to the third party.

269 (b) The information the division shall provide under Subsection (5)(a) is:

270 (i) the fact a controlled substance has been dispensed to the individual, but without  
271 identifying the controlled substance; and

272 (ii) the date the controlled substance was dispensed.

273 (c) (i) An individual who has made a request under Subsection (5)(a) may direct that  
274 the division discontinue providing information to the third party.

275 (ii) The division shall:

276 (A) notify the third party that the individual has directed the division to no longer  
277 provide information to the third party; and

278 (B) discontinue providing information to the third party.

279 (6) (a) An individual who is granted access to the database based on the fact that the  
280 individual is a licensed practitioner or a mental health therapist shall be denied access to the  
281 database when the individual is no longer licensed.

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

285 (7) A probation or parole officer is not required to obtain a search warrant to access the  
286 database in accordance with Subsection (2)(n).

287 Section 2. **Effective date.**

288 This bill takes effect on October 31, 2016.