

enacted one of the first drug-free workplace programs in the nation.² A standard drug-free workplace program incorporates a written policy, drug and alcohol abuse prevention training, continuing education, an employee assistance program, and drug testing.³ Section 440.102, F.S., sets out the requirements for a drug-free workplace program in Florida. An employer must provide all employees and job applicants a written policy containing the employer's policy on employee drug use and, among other things, the consequences of refusing to submit to a drug test or testing positive for drugs.⁴ An employer participating in a drug-free workplace program must conduct the following types of drug tests:

- Job applicant drug testing;
- Reasonable-suspicion drug testing;
- Routine fitness-for-duty drug testing; and
- Followup drug testing.⁵

The statute provides procedures for drug testing and specimen collection, such as:

- The individual's privacy should be considered when collecting a sample;
- The specimen must be documented;
- Collection, storage, and transportation of the specimen should be done to avoid contamination or adulteration of the specimen;
- *Initial drug tests and confirmation drug tests must be conducted by a licensed or certified laboratory;*
- A specimen may be collected by specified medical professionals or persons employed by a licensed or certified laboratory;
- The person collecting the specimen must collect enough for two drug tests; and
- Every specimen producing a positive, confirmed test result must be preserved for 210 days.⁶

A laboratory that analyzes the specimens from drug testing, also known as a drug-free workplace laboratory, must be licensed by the Agency for Health Care Administration pursuant to the requirements of part II, ch. 408, F.S., which governs health care licensing.⁷ The laboratory must also comply with the provisions of part I, ch. 483, F.S., which governs clinical laboratories.⁸

Additionally, the statute provides for employee and employer protection, confirmation testing, confidentiality, rules, provisions for certain public employees, a denial of benefits, collective bargaining rights, applicability, and provisions for state construction contracts.

² Florida Dep't of Financial Services, Florida Workers' Compensation, *Florida's Drug-Free Workplace Program*, 27 (2000), available at http://www.fldfs.com/WC/pdf/DrugFreeWorkplace_new.pdf (last visited March 4, 2009).

³ *Id.* at 26.

⁴ Section 440.102(3), F.S.

⁵ Section 440.102(4), F.S.

⁶ Section 440.102(5), F.S. (emphasis added).

⁷ Section 440.102(9), F.S.

⁸ Fla. Admin. Code R. 59A-24.006.

A Florida employer who implements a drug-free workplace program is eligible for a 5-percent discount on workers' compensation insurance, which can result in annual savings of several thousand dollars.⁹

Nursing

Chapter 464, F.S., regulates the profession of nursing. Most states have a "Nurse Practice Act," which is a set of laws that "govern specific aspects of the nursing profession" and protect "the public from an unsafe nurse by ensuring minimum levels of performance."¹⁰ Florida's Nurse Practice Act, codified in part I, ch. 464, F.S., provides minimum requirements to ensure the safe practice of nursing in the state, including requirements for licensure of licensed practical nurses, registered nurses, and advanced registered nurse practitioners.

An advanced registered nurse practitioner (ARNP) is defined as "any person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice."¹¹ An ARNP must have a master's degree and can be a certified nurse anesthetist, certified nurse midwife, or nurse practitioner.¹² In order to become certified as an ARNP, a nurse must submit an application to the Department of Health showing that he or she has a current license to practice professional nursing and that he or she meets certain requirements set forth by the Board of Nursing. These requirements include:

- Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.
- Certification by an appropriate specialty board.
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.¹³

Additionally, the Board of Nursing requires ARNPs to have a minimum of \$100,000/300,000 (per incident and aggregate respectively) in medical malpractice insurance.¹⁴

Under the Nurse Practice Act, an advanced registered nurse practitioner must perform his or her authorized functions under an established protocol that must be filed with the Board of Nursing.¹⁵ Practitioners licensed in the medical practice, osteopathy, or dentistry supervise the

⁹ Florida Dep't of Financial Services, *supra* note 2, at 30; *see generally* s. 627.0915, F.S.

¹⁰ Kevin Erickson, *The Nurse Practice Act – A Closer Look*, <http://www.isnare.com/?aid=27070&ca=Legal> (last visited Feb. 20, 2009).

¹¹ Section 464.003(7), F.S.

¹² *Id.*; *see also* e-mail from a Florida Nurses Association representative to the Senate Committee on Judiciary (Feb. 18, 2008) (on file with the Senate Committee on Judiciary). Under s. 464.012(1)(c), F.S., applicants applying to become an advanced registered nurse practitioner graduating on or after October 1, 1998, must have a master's degree for certification. Additionally, applicants who want to be a registered nurse anesthetist and graduate on or after October 1, 2001, must have a master's degree.

¹³ Section 464.012(1), F.S.

¹⁴ Florida Board of Nursing, Florida Department of Health, *Frequently Asked Questions*, http://www.doh.state.fl.us/mqa/nursing/nur_faqs.html (follow "ARNP" link) (last visited Feb. 20, 2009).

¹⁵ Section 464.012(3), F.S.

ARNP within the framework of the protocol.¹⁶ The Board of Nursing and the Board of Medicine have filed identical administrative rules¹⁷ setting forth standards for the protocols, which establish obligations on medical physicians, osteopathic physicians, and dentists who enter into protocol relationships with ARNPs. The Board of Osteopathic Medicine and the Board of Dentistry, which have regulatory jurisdiction over osteopathic physicians and dentists, respectively, are not required to adopt administrative rules regarding the standards for advanced registered nurse practitioner protocols.

The duties of advanced registered nurse practitioners include:

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- *Ordering diagnostic tests* and physical and occupational therapy;
- Ordering physical and occupational therapy;
- Performing acts of nursing diagnosis and nursing treatment of alterations of the health status;
- Performing acts of medical diagnosis and treatment, prescription, and operation.¹⁸

An advanced registered nurse practitioner may also perform certain duties within his or her specialty.¹⁹ Although ARNPs may prescribe medications in accordance with the protocol and under the authority of the supervising physician, they cannot prescribe controlled substances.²⁰

Clinical Laboratories

Clinical laboratories are governed by the provisions of part I, ch. 483, F.S. A clinical laboratory is the physical location where statutorily defined services “are performed to provide information or materials for use in the diagnosis, prevention, or treatment of a disease or the identification or assessment of a medical or physical condition.”²¹ The state of Florida requires any facility that operates as a clinical laboratory to obtain a state clinical laboratory license as well as a federal Clinical Laboratory Improvement Amendment certificate.²²

Under Florida law, a “clinical laboratory may examine human specimens at the request only of a licensed practitioner or other person authorized by law to use the findings of clinical laboratory

¹⁶ *Id.*

¹⁷ Florida Admin. Code R. 64B9-4.010 and 64B8-35.002.

¹⁸ Sections 464.012(3) and 464.003(3)(d), F.S. (emphasis added).

¹⁹ Section 464.012(4), F.S.

²⁰ Florida Board of Nursing, *supra* note 14. Florida is one of two states that do not allow advanced registered nurse practitioners to prescribe controlled substances. The other state is Alabama. Hawaii recently adopted rules giving advanced registered nurse practitioners the authority to prescribe controlled substances, which were to go into effect by the end of 2008 or early in 2009. Comm. on Health Regulation, Fla. Senate, *Authorization for Advanced Registered Nurse Practitioners to Prescribe Controlled Substances*, 8 (Interim Project Report 2009-117) (Oct. 2008), available at http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-117hr.pdf (last visited March 4, 2009).

²¹ Section 483.041(2), F.S.

²² Agency for Health Care Administration, *Clinical Laboratories*, http://www.ahca.myflorida.com/licensing_cert.shtml (follow “Clinical Laboratories” link) (last visited Feb. 20, 2009).

examinations.”²³ A “licensed practitioner” is defined under the statute for clinical laboratories to mean a Florida-licensed medical physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, naturopathic physician, or *advanced registered nurse practitioner*.²⁴ The statute also recognizes practitioners from another state licensed under similar statutes, with certain qualifiers, as a licensed practitioner for purposes of ch. 483, F.S.

Section 483.181, F.S., permits a clinical laboratory to examine human specimens at the request of an advanced registered nurse practitioner, but it does not require the laboratory to do so. However, a clinical laboratory *must* accept a human specimen for examination by a Florida-licensed medical physician, osteopathic physician, chiropractic physician, naturopathic physician, or dentist, if the specimen and test are the type performed by the clinical laboratory. The only way a clinical laboratory may refuse a specimen from these practitioners is based upon a history of nonpayment for services by the practitioner. Additionally, a clinical laboratory may not charge a different price for tests based on what kind of licensed practitioner is submitting the test.²⁵

III. Effect of Proposed Changes:

This bill amends s. 440.102, F.S., to remove language requiring initial drug tests to be conducted by a licensed or certified laboratory. Because of the advancement in technology, initial drug tests are capable of being conducted at the employer’s work site. The bill retains the requirement under current law that, if a drug test is positive, a confirmation test must still be conducted by a licensed or certified laboratory.²⁶

Section 483.181, F.S., is also amended to require clinical laboratories to accept specimens submitted for examination by Florida-licensed advanced registered nurse practitioners. The clinical laboratory could only refuse a specimen submitted by an advanced registered nurse practitioner based on a history of nonpayment. Additionally, a clinical laboratory could not charge prices to an advanced registered nurse practitioner that are different than prices it charges to other licensed practitioners.

The effective date of the bill is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²³ Section 483.181(1), F.S.

²⁴ Section 483.041(7), F.S. (emphasis added).

²⁵ Section 483.181(5), F.S.

²⁶ Section 440.102(5)(d), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill will allow employers to conduct initial drug testing on-site, rather than requiring the test be conducted by a licensed or certified laboratory, employees who have a negative test may be able to return to work faster. Under the current system, an employee may have to wait several days to return to work after the specimen is shipped to the laboratory for testing.

Advanced registered nurse practitioners will be able to have human specimens from their patients examined at any clinical laboratory in Florida that performs the type of test requested. To the extent that the bill eliminates any costs that are associated with an advanced registered nurse practitioner's inability to submit human specimens for examination in some clinical laboratories, the practitioner's patients may benefit by having greater access to care.

C. Government Sector Impact:

Permitting initial drug testing to be conducted at the employer's work site, rather than requiring that the tests be conducted by a licensed or certified laboratory, allows employers who participate in a drug-free workplace program to save the money it costs to send the specimen to the laboratory. To the extent a state agency participates in a drug-free workplace program, the state may be able to save the money it costs to ship the initial specimen to a laboratory. However, the exact cost savings is unknown at this time. Additionally, it is unknown how much the actual cost is of the technology to be able to conduct the initial tests at the employer's work site.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 4, 2009:

The committee substitute removes language requiring initial drug tests to be conducted by a licensed or certified laboratory as part of a drug-free workplace program.

- B. **Amendments:**

None.