

**REGISTRATION REQUIREMENTS
FOR CLINICS OWNED
BY NON-PHYSICIANS**

by
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SCOPE

This chapter discusses the new requirements for registration placed on health care clinics, which are owned, or partially owned, by non-physicians, as set forth in the law, passed by the Florida Legislature in 2001. The requirement for a medical director and the duties placed on the medical director of such clinics by the statute is also discussed.

SYNOPSIS

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§28.01 Registration Requirements for Clinics Owned by Non-Physicians**[1] Background and Purpose of the Registration Law**

In 2001, the Florida Legislature enacted a law to require any health care clinic in the state that was owned or partially owned by a non-physician to meet certain legal requirements, including registration with the state. Requirements include that the clinic have a named medical director who is a licensed physician (limited to only medical doctors, doctors of osteopathic medicine, doctors of chiropractic medicine, or doctors of podiatry) who will be personally liable for overseeing and ensuring compliance with the state's requirements. This law is cited as Section 456.0375, Florida Statutes, and can be found in the chapter of Florida Statutes that applies to all health care providers. A copy is contained in Section III of this book.

The primary purpose of the law was to help prevent health care fraud and abuse in the state. This will be accomplished by requiring licensed physicians to be responsible for the clinic's compliance with state laws. Also, it is thought that if all of the owners of such clinics are fully identified, those who have previously been convicted of certain crimes or who have been excluded from the Medicare or Medicaid Programs will be identified and prevented from using the clinic for similar purposes.

Specifically exempted from registration were those health care clinics and facilities already required to be licensed by the state or which were operated by not-for-profit corporations (exempt from taxation pursuant to Internal Revenue Code section 501(c)(3)). These include hospitals, abortion clinics, nursing homes, mental health clinics, substance abuse clinics, dentistry clinics, pharmacies, optometry clinics, and others.

Therefore, if the clinic has one or more shareholders (for a corporation), partners (for a partnership), or members (for a limited liability company), who are not a physician (as defined immediately above), or is owned by a sole proprietor who is not a physician, it must meet the registration requirements imposed by the law.

[2] Board of Medicine Rules Implementing the Statute

The Legislature, in passing this act, granted authority to the Board of Medicine to enact additional rules and regulations to implement it. At one point, the Board was considering including fingerprinting and photographs for each owner of a clinic in which any owner was a non-physician. The fingerprinting requirement was not adopted, because of a huge outcry from many of those who would have been required to be fingerprinted who were mostly the physician owners. The Florida Administrative Code (F.A.C.) provision which was adopted to further implement this act is set forth in F.A.C. section 64-2.001 and is contained in the appendix to this book.

Any person violating the law is guilty of a felony. Additionally, a licensed health care professional found to be in violation of the law could also have his/her profes-

sional license disciplined (including revocation) under the applicable health care practice act. Because the sanctions for noncompliance are so severe, and because of the difficulty in monitoring the day-to-day activities of clinic personnel, we strongly recommend that any physician serving as the medical director of any such clinic to have a detailed written contract such as the one we have included following this chapter.

§28.02 Major Provisions of the Law

Health care clinic registration has three major provisions that will purportedly help to reduce and prevent health care fraud.

[1] Clinics Subject to Registration

The law specifies which "clinics" are subject to the regulation. In general, clinics that are wholly owned by licensed health care practitioners are not subject to this new regulation. This distinction reflects the state's current authority through the licensure Boards to hold these licensed practitioners accountable for fraudulent activity and be subject to disciplinary action taken on their license in addition to any exclusion from insurance programs and any criminal penalties for fraudulent activity.

Clinics that provide health care services for which the clinic charges for reimbursement are required to be regulated if they are:

- NOT wholly owned by health care licensees
- NOT regulated under other state regulatory programs
- NOT exempt from the federal IRS law as a not for profit organization

Because of the rather complex nature of the basic determination of whether the registration requirement even applies or not, we have included a copy of an algorithm which may be used to determine the applicability of the law in any given situation. It follows this chapter.

[2] Charges Billed by an Unregistered Clinic are Illegal

The law requires that all specified clinics must register with the Department of Health. Further, all charges for reimbursement claims submitted by clinics that are required to be registered, and are not registered, will be considered unlawful charges and non-compensable. Additionally, any person operating a clinic that is required to be registered is subject to a third degree felony violation for not registering the clinic.

[3] Licensed Medical Director is Required for Each Clinic

The law requires that all registered clinics must employ or contract with a licensed physician to serve as a medical director of the clinic. If the clinic does not provide

physician services, then the clinic may appoint another licensed health care practitioner to serve as clinical director of the clinic. This requirement for a medical or clinical director ensures that a licensed practitioner is responsible for the lawful provision of health care services in the clinic. The requirement also ensures that the Professional Licensure Boards have the authority to hold the medical or clinical director accountable for exercising their responsibilities. Medical or clinical directors who violate their responsibilities will be subject to professional discipline, including the potential for revocation of their license to practice.

[4] Duties Required of the Clinic's Medical Director

The services that are required to be performed by a physician serving as a Medical Director of a clinic that is required to be registered under this law, as set forth in Section 456.0375, Florida Statutes, include a requirement to:

- a. Have signs identifying the medical director or clinical director posted in a conspicuous location within the clinic readily visible to all patients;
- b. Ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license;
- c. Review any patient referral contracts or agreements executed by the clinic;
- d. Ensure that all health care practitioners at the clinic have active appropriate certification or licensure for the level of care being provided;
- e. Serve as the records holder for the clinic as defined in Section 456.057, Florida Statutes;
- f. Ensure compliance with the record-keeping, office surgery, and adverse incident reporting requirements of Chapter 456, Florida Statutes, the respective practice acts, and rules adopted thereunder; and
- g. Conduct systematic reviews of the clinic's billings to ensure that the billings are not fraudulent or unlawful.

[5] Additional Recommended Duties for the Clinic's Medical Director

In addition to the duties that the law requires, specified above, the authors recommend that the Medical Director of a clinic required to be licensed under this law also include the following duties:

- a. Monitor quality control and quality assurance activities of the clinic;
- b. Participate in the clinic's risk management programs;
- c. Develop protocols for the clinic employees;

- d. Assist in the development and coordination of continuing education and in-service training and programs for the staff of the clinic and participate in such training and programs, and participate in staff meetings;
- e. Assist in responding to regulatory agencies requests for comments and data accumulation;
- f. Any other reasonable medical administrative duties assigned by the clinic's President.

§28.03 MEDICAL DIRECTOR'S CONTRACT FOR CLINIC

Because of the confusion that has resulted from this law and the significant sanctions that a physician can incur for participating (even unknowingly) in a violation, we strongly recommend that a contract similar to the one attached be used. This sample contract should also be reviewed for additional details on the duties that a medical director of a registered clinic will have and how the physician can require certain contractual terms that will help protect herself from criminal or civil liability.

Note: This article was originally published as a chapter in
The Florida Healthcare Professionals' Medico-Legal Guide

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Published by DC Press, Sanford, Florida (2003)