

34-41-104 Requirements for identification, collection, and testing of samples.

- (1) The local governmental entity or state institution of higher education shall ensure that:
 - (a) all sample collection under this chapter is performed by an entity independent of the local government or state institution of higher education;
 - (b) all testing for drugs under this chapter is performed by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology;
 - (c) the instructions, chain of custody forms, and collection kits, including bottles and seals, used for sample collection are prepared by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology; and
 - (d) sample collection and testing for drugs under this chapter is in accordance with the conditions established in this section.
- (2) The local governmental entity or state institution of higher education may:
 - (a) require samples from its employees, volunteers, prospective employees, or prospective volunteers;
 - (b) require presentation of reliable identification to the person collecting the samples; and
 - (c) in order to dependably test for the presence of drugs, designate the type of sample to be used for testing.
- (3) The local governmental entity or state institution of higher education shall ensure that its ordinance or policy requires that:
 - (a) the collection of samples is performed under reasonable and sanitary conditions;
 - (b) samples are collected and tested:
 - (i) to ensure the privacy of the individual being tested; and
 - (ii) in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
 - (c) sample collection is appropriately documented to ensure that:
 - (i) samples are labeled and sealed so as reasonably to preclude the probability of erroneous identification of test results; and
 - (ii) employees, volunteers, prospective employees, or prospective volunteers have the opportunity to provide notification of any information:
 - (A) that any person named in Subsection (3)(c)(ii) considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs or other relevant medical information; and
 - (B) in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213;
 - (d) sample collection, storage, and transportation to the place of testing are performed in a manner that reasonably precludes the probability of sample misidentification, contamination, or adulteration; and
 - (e) sample testing conforms to scientifically accepted analytical methods and procedures.
- (4) Before the result of any test may be used as a basis for any action by a local governmental entity or state institution of higher education under Section 34-41-105, the local governmental entity or state institution of higher education shall verify or confirm any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical methods and shall provide that the employee, prospective employee, volunteer, or prospective volunteer be notified as soon as possible by telephone or in writing at the last-known address or telephone number of the result of the initial test, if it is positive, and told of his option to have the 15 ml urine sample tested, at an expense equally divided between

the donor and the employer. In addition to the initial test results, the test results of the 15 ml urine sample shall be considered at any subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 have been complied with in the collection, handling, and testing of these samples.

- (5) Any drug testing by a local governmental entity or state institution of higher education shall occur during or immediately after the regular work period of the employee or volunteer and shall be considered as work time for purposes of compensation and benefits.
- (6) The local governmental entity or state institution of higher education shall pay all costs of sample collection and testing for drugs required under its ordinance or policy, including the costs of transportation if the testing of a current employee or volunteer is conducted at a place other than the workplace.

Amended by Chapter 13, 1998 General Session