

1 A bill to be entitled
2 An act relating to health care provider
3 accountability; amending s. 400.022, F.S.; revising
4 the rights of licensed nursing home facility
5 residents; amending s. 408.809, F.S.; revising
6 background screening requirements for certain
7 licensure applicants; amending s. 408.812, F.S.;
8 creating a cause of action for an ex parte temporary
9 injunction against continued unlicensed activity;
10 providing requirements for such injunction; providing
11 construction; authorizing the Agency for Health Care
12 Administration to provide certain records to local law
13 enforcement and state attorneys' offices under certain
14 circumstances; amending s. 435.04, F.S.; revising
15 background screening requirements for certain
16 licensure applicants; amending ss. 458.328 and
17 459.0138, F.S.; providing standard of practice
18 requirements for office surgeries; providing
19 definitions; prohibiting certain office surgeries;
20 providing physician, office, and procedure
21 requirements; prohibiting specified health care
22 facilities from registering as an office; providing an
23 effective date.

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25 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (o) of subsection (1) of section 400.022, Florida Statutes, is amended to read:

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(o) The right to be free from mental and physical abuse, sexual abuse, neglect, exploitation, corporal punishment, extended involuntary seclusion, and ~~from~~ physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

Section 2. Subsection (4) of section 408.809, Florida Statutes, is amended to read:

408.809 Background screening; prohibited offenses.—

51 (4) In addition to the offenses listed in s. 435.04, all
52 persons required to undergo background screening pursuant to
53 this part or authorizing statutes must not have an arrest
54 awaiting final disposition for, must not have been found guilty
55 of, regardless of adjudication, or entered a plea of nolo
56 contendere or guilty to, and must not have been adjudicated
57 delinquent and the record not have been sealed or expunged for
58 any of the following offenses or any similar offense of another
59 jurisdiction:

60 (a) Any authorizing statutes, if the offense was a felony.

61 (b) This chapter, if the offense was a felony.

62 (c) Section 409.920, relating to Medicaid provider fraud.

63 (d) Section 409.9201, relating to Medicaid fraud.

64 (e) Section 414.39, relating to fraud, if the offense was
65 a felony.

66 (f)~~(e)~~ Section 741.28, relating to domestic violence.

67 (g)~~(f)~~ Section 777.04, relating to attempts, solicitation,
68 and conspiracy to commit an offense listed in this subsection.

69 (h)~~(g)~~ Section 784.03, relating to battery, if the victim
70 is a vulnerable adult as defined in s. 415.102 or a patient or
71 resident of a facility licensed under chapter 395, chapter 400,
72 or chapter 429.

73 (i) Section 815.04, relating to offenses against
74 intellectual property.

75 (j) Section 815.06, relating to offenses against users of

76 computers, computer systems, computer networks, and electronic
 77 devices.

78 (k)~~(h)~~ Section 817.034, relating to fraudulent acts
 79 through mail, wire, radio, electromagnetic, photoelectronic, or
 80 photooptical systems.

81 (l)~~(i)~~ Section 817.234, relating to false and fraudulent
 82 insurance claims.

83 (m)~~(j)~~ Section 817.481, relating to obtaining goods by
 84 using a false or expired credit card or other credit device, if
 85 the offense was a felony.

86 (n)~~(k)~~ Section 817.50, relating to fraudulently obtaining
 87 goods or services from a health care provider.

88 (o)~~(l)~~ Section 817.505, relating to patient brokering.

89 (p)~~(m)~~ Section 817.568, relating to criminal use of
 90 personal identification information.

91 (q)~~(n)~~ Section 817.60, relating to obtaining a credit card
 92 through fraudulent means.

93 (r)~~(o)~~ Section 817.61, relating to fraudulent use of
 94 credit cards, if the offense was a felony.

95 (s)~~(p)~~ Section 831.01, relating to forgery.

96 (t)~~(q)~~ Section 831.02, relating to uttering forged
 97 instruments.

98 (u)~~(r)~~ Section 831.07, relating to forging bank bills,
 99 checks, drafts, or promissory notes.

100 (v)~~(s)~~ Section 831.09, relating to uttering forged bank

101 bills, checks, drafts, or promissory notes.

102 (w) Section 831.29, relating to making or having
 103 instruments and material for counterfeiting driver licenses or
 104 identification cards.

105 ~~(x)(t)~~ Section 831.30, relating to fraud in obtaining
 106 medicinal drugs.

107 ~~(y)(u)~~ Section 831.31, relating to the sale, manufacture,
 108 delivery, or possession with the intent to sell, manufacture, or
 109 deliver any counterfeit controlled substance, if the offense was
 110 a felony.

111 (z) Section 831.311, relating to the unlawful sale,
 112 manufacture, alteration, delivery, uttering, or possession of
 113 counterfeit-resistant prescription blanks for controlled
 114 substances.

115 (aa) Section 836.05, relating to threats or extortion.

116 (bb) Section 836.10, relating to written or electronic
 117 threats to kill, do bodily injury, or conduct a mass shooting or
 118 an act of terrorism.

119 (cc) Section 873.01, relating to the purchase or sale of
 120 human organs and tissue.

121 ~~(dd)(v)~~ Section 895.03, relating to racketeering and
 122 collection of unlawful debts.

123 ~~(ee)(w)~~ Section 896.101, relating to the Florida Money
 124 Laundering Act.

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126 If, upon rescreening, a person who is currently employed or
 127 contracted with a licensee and was screened and qualified under
 128 s. 435.04 has a disqualifying offense that was not a
 129 disqualifying offense at the time of the last screening, but is
 130 a current disqualifying offense and was committed before the
 131 last screening, he or she may apply for an exemption from the
 132 appropriate licensing agency and, if agreed to by the employer,
 133 may continue to perform his or her duties until the licensing
 134 agency renders a decision on the application for exemption if
 135 the person is eligible to apply for an exemption and the
 136 exemption request is received by the agency no later than 30
 137 days after receipt of the rescreening results by the person.

138 Section 3. Subsection (6) of section 408.812, Florida
 139 Statutes, is amended to read:

140 408.812 Unlicensed activity.—

141 (6) In addition to granting injunctive relief pursuant to
 142 subsection (2), if the agency determines that a person or entity
 143 is operating or maintaining a provider without obtaining a
 144 license and determines that a condition exists that poses a
 145 threat to the health, safety, or welfare of a client of the
 146 provider, the person or entity is subject to the same actions
 147 and fines imposed against a licensee as specified in this part,
 148 authorizing statutes, and agency rules.

149 (a) The agency may petition the circuit court for an ex
 150 parte temporary injunction against continued unlicensed activity

151 when agency personnel have verified, through an onsite
152 inspection, that a person or entity is advertising, offering, or
153 providing services that require licensure and has previously
154 received notification from the agency to discontinue such
155 activity.

156 (b) A sworn petition seeking the issuance of an ex parte
157 temporary injunction against continued unlicensed activity shall
158 allege the location of the unlicensed activity, the owners and
159 operators of the unlicensed provider, the type of services that
160 require licensure, and specific facts supporting the conclusion
161 that the respondent is engaged in unlicensed activity, including
162 the date, time, and location at which the respondent was
163 notified to discontinue such activity, whether the respondent
164 prohibited the agency from conducting a subsequent investigation
165 to determine current compliance or noncompliance, any previous
166 injunctive relief granted against the respondent, and any
167 previous agency determination that the respondent has previously
168 been identified as engaging in unlicensed activity.

169 (c) A bond may not be required by the court for the entry
170 of an ex parte temporary injunction.

171 (d) Except as provided in s. 90.204, in a hearing ex parte
172 for the purpose of obtaining an ex parte temporary injunction,
173 evidence other than verified pleadings or affidavits by agency
174 personnel or others with firsthand knowledge of the alleged
175 unlicensed activity may not be used as evidence, unless the

176 respondent appears at the hearing. A denial of a petition for an
177 ex parte temporary injunction shall be by written order noting
178 the legal grounds for denial. This paragraph does not affect the
179 agency's right to promptly amend any petition or otherwise be
180 heard in person on any petition in accordance with the Florida
181 Rules of Civil Procedure.

182 (e) If it appears to the court that the respondent is
183 engaged in unlicensed activity and has not discontinued that
184 activity after notification by the agency, the court may grant
185 an ex parte temporary injunction, pending a full hearing, and
186 may grant such relief as the court deems proper, including an ex
187 parte temporary injunction restraining the respondent from
188 advertising, offering, or providing services for which licensure
189 is required under this chapter and authorizing statutes, and
190 requiring the respondent to provide agency personnel with full
191 access to facility personnel, records, and clients for a future
192 inspection of the premises.

193 (f) Any such ex parte temporary injunction shall be
194 effective for a fixed period not to exceed 30 days.

195 (g) The agency must conduct an inspection of the
196 identified premises within 20 days after issuance of the ex
197 parte temporary injunction to verify the respondent's compliance
198 or noncompliance with the ex parte temporary injunction. If the
199 respondent is found to have complied with the ex parte temporary
200 injunction, the agency shall voluntarily dismiss the ex parte

201 temporary injunction. If the agency identifies that unlicensed
202 activity has continued in violation of the ex parte temporary
203 injunction, the agency may file a petition for permanent
204 injunction within 10 days after identifying the continued
205 noncompliance at which time a full hearing shall be set as soon
206 as practicable. The agency may, along with the filing of a
207 petition for permanent injunction, move for an extension of the
208 ex parte temporary injunction until disposition of the permanent
209 injunction proceedings.

210 (h) An ex parte temporary injunction against continued
211 unlicensed activity shall be served by the sheriff of the county
212 in which the respondent's activities are conducted.

213 (i) Remedies in this subsection are not exclusive but are
214 in addition to any other administrative or criminal remedies for
215 unlicensed activity.

216 (j) The agency is not required to exhaust its
217 administrative remedies before seeking the relief provided under
218 this subsection.

219 (k) The agency is authorized to provide any and all
220 records of agency inspections to local law enforcement or state
221 attorneys' offices upon request and without redaction.

222 Section 4. Subsection (2) of section 435.04, Florida
223 Statutes, is amended to read:

224 435.04 Level 2 screening standards.—

225 (2) The security background investigations under this

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226 section must ensure that no persons subject to the provisions of
227 this section have been arrested for and are awaiting final
228 disposition of, have been found guilty of, regardless of
229 adjudication, or entered a plea of nolo contendere or guilty to,
230 or have been adjudicated delinquent and the record has not been
231 sealed or expunged for, any offense prohibited under any of the
232 following provisions of state law or similar law of another
233 jurisdiction:

234 (a) Section 39.205, relating to failure to report child
235 abuse, abandonment, or neglect.

236 (b) Section 316.193(3)(c)3., relating to DUI manslaughter.

237 ~~(c)(a)~~ Section 393.135, relating to sexual misconduct with
238 certain developmentally disabled clients and reporting of such
239 sexual misconduct.

240 ~~(d)(b)~~ Section 394.4593, relating to sexual misconduct
241 with certain mental health patients and reporting of such sexual
242 misconduct.

243 ~~(e)(e)~~ Section 415.111, relating to adult abuse, neglect,
244 or exploitation of aged persons or disabled adults.

245 ~~(f)(d)~~ Section 777.04, relating to attempts, solicitation,
246 and conspiracy to commit an offense listed in this subsection.

247 ~~(g)(e)~~ Section 782.04, relating to murder.

248 ~~(h)(f)~~ Section 782.07, relating to manslaughter,
249 aggravated manslaughter of an elderly person or disabled adult,
250 or aggravated manslaughter of a child.

251 (i)~~(g)~~ Section 782.071, relating to vehicular homicide.

252 (j)~~(h)~~ Section 782.09, relating to killing of an unborn
253 child by injury to the mother.

254 (k)~~(i)~~ Chapter 784, relating to assault, battery, and
255 culpable negligence, if the offense was a felony.

256 (l)~~(j)~~ Section 784.011, relating to assault, if the victim
257 of the offense was a minor.

258 (m)~~(k)~~ Section 784.03, relating to battery, if the victim
259 of the offense was a minor.

260 (n)~~(l)~~ Section 787.01, relating to kidnapping.

261 (o)~~(m)~~ Section 787.02, relating to false imprisonment.

262 (p)~~(n)~~ Section 787.025, relating to luring or enticing a
263 child.

264 (q)~~(o)~~ Section 787.04(2), relating to taking, enticing, or
265 removing a child beyond the state limits with criminal intent
266 pending custody proceedings.

267 (r)~~(p)~~ Section 787.04(3), relating to carrying a child
268 beyond the state lines with criminal intent to avoid producing a
269 child at a custody hearing or delivering the child to the
270 designated person.

271 (s) Section 787.06, relating to human trafficking.

272 (t) Section 787.07, relating to human smuggling.

273 (u)~~(q)~~ Section 790.115(1), relating to exhibiting firearms
274 or weapons within 1,000 feet of a school.

275 (v)~~(r)~~ Section 790.115(2)(b), relating to possessing an

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276 electric weapon or device, destructive device, or other weapon
277 on school property.

278 (w) Section 790.166, relating to the manufacture,
279 possession, sale, delivery, display, use, or attempted or
280 threatened use of a weapon of mass destruction or hoax weapon of
281 mass destruction.

282 (x)~~(s)~~ Section 794.011, relating to sexual battery.

283 (y)~~(t)~~ Former s. 794.041, relating to prohibited acts of
284 persons in familial or custodial authority.

285 (z)~~(u)~~ Section 794.05, relating to unlawful sexual
286 activity with certain minors.

287 (aa)~~(v)~~ Chapter 796, relating to prostitution.

288 (bb)~~(w)~~ Section 798.02, relating to lewd and lascivious
289 behavior.

290 (cc)~~(x)~~ Chapter 800, relating to lewdness and indecent
291 exposure.

292 (dd)~~(y)~~ Section 806.01, relating to arson.

293 (ee)~~(z)~~ Section 810.02, relating to burglary.

294 (ff)~~(aa)~~ Section 810.14, relating to voyeurism, if the
295 offense is a felony.

296 (gg)~~(bb)~~ Section 810.145, relating to video voyeurism, if
297 the offense is a felony.

298 (hh)~~(cc)~~ Chapter 812, relating to theft, robbery, and
299 related crimes, if the offense is a felony.

300 (ii)~~(dd)~~ Section 817.563, relating to fraudulent sale of

301 controlled substances, only if the offense was a felony.
 302 (jj)~~(ee)~~ Section 825.102, relating to abuse, aggravated
 303 abuse, or neglect of an elderly person or disabled adult.
 304 (kk)~~(ff)~~ Section 825.1025, relating to lewd or lascivious
 305 offenses committed upon or in the presence of an elderly person
 306 or disabled adult.
 307 (ll)~~(gg)~~ Section 825.103, relating to exploitation of an
 308 elderly person or disabled adult, if the offense was a felony.
 309 (mm)~~(hh)~~ Section 826.04, relating to incest.
 310 (nn)~~(ii)~~ Section 827.03, relating to child abuse,
 311 aggravated child abuse, or neglect of a child.
 312 (oo)~~(jj)~~ Section 827.04, relating to contributing to the
 313 delinquency or dependency of a child.
 314 (pp)~~(kk)~~ Former s. 827.05, relating to negligent treatment
 315 of children.
 316 (qq)~~(ll)~~ Section 827.071, relating to sexual performance
 317 by a child.
 318 (rr) Section 838.015, relating to bribery.
 319 (ss)~~(mm)~~ Section 843.01, relating to resisting arrest with
 320 violence.
 321 (tt)~~(nn)~~ Section 843.025, relating to depriving a law
 322 enforcement, correctional, or correctional probation officer
 323 means of protection or communication.
 324 (uu)~~(oo)~~ Section 843.12, relating to aiding in an escape.
 325 (vv)~~(pp)~~ Section 843.13, relating to aiding in the escape

326 of juvenile inmates in correctional institutions.
 327 (ww)~~(qq)~~ Chapter 847, relating to obscene literature.
 328 (xx) Section 859.01, relating to poisoning food or water.
 329 (yy) Section 873.01, relating to the purchase or sale of
 330 human organs and tissue.
 331 (zz)~~(rr)~~ Section 874.05, relating to encouraging or
 332 recruiting another to join a criminal gang.
 333 (aaa) Section 876.32, relating to treason.
 334 (bbb)~~(ss)~~ Chapter 893, relating to drug abuse prevention
 335 and control, only if the offense was a felony or if any other
 336 person involved in the offense was a minor.
 337 (ccc)~~(tt)~~ Section 916.1075, relating to sexual misconduct
 338 with certain forensic clients and reporting of such sexual
 339 misconduct.
 340 (ddd)~~(uu)~~ Section 944.35(3), relating to inflicting cruel
 341 or inhuman treatment on an inmate resulting in great bodily
 342 harm.
 343 (eee)~~(vv)~~ Section 944.40, relating to escape.
 344 (fff)~~(ww)~~ Section 944.46, relating to harboring,
 345 concealing, or aiding an escaped prisoner.
 346 (ggg)~~(xx)~~ Section 944.47, relating to introduction of
 347 contraband into a correctional facility.
 348 (hhh) Section 951.22, relating to county detention
 349 facilities and contraband articles.
 350 (iii)~~(yy)~~ Section 985.701, relating to sexual misconduct

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351 in juvenile justice programs.

352 ~~(jjj)-(zz)~~ Section 985.711, relating to contraband
353 introduced into detention facilities.

354 Section 5. Subsection (2) of section 458.328, Florida
355 Statutes, renumbered as subsection (3), and a new subsection (2)
356 is added to that section to read:

357 458.328 Office surgeries.—

358 (2) STANDARD OF PRACTICE.—

359 (a) For purposes of this section, the term:

360 1. "Office surgery" means a surgery performed at an office
361 that primarily serves as a physician's office at which a
362 physician regularly performs consultations with surgical
363 patients, presurgical examinations, and postoperative monitoring
364 and care related to office surgeries and at which patient
365 records are readily maintained and available.

366 2. "Physician" means a physician or surgeon licensed to
367 practice under this chapter.

368 (b) A physician performing a gluteal fat grafting
369 procedure in an office surgery setting shall adhere to standards
370 of practice pursuant to this subsection and rules adopted by the
371 board. The board may not adopt by rule standards of practice
372 that conflict with this subsection.

373 (c) Office surgeries may not:

374 1. Result in blood loss of more than 10 percent of
375 estimated blood volume in a patient with a normal hemoglobin

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376 level;

377 2. Require major or prolonged intracranial, intrathoracic,
378 abdominal, or joint replacement procedures, except for
379 laparoscopic procedures;

380 3. Involve major blood vessels performed with direct
381 visualization by open exposure of the major blood vessel, except
382 for percutaneous endovascular intervention; or

383 4. Be emergent or life threatening.

384 (d)1. A physician performing a gluteal fat grafting
385 procedure must be a cosmetic surgeon certified by the American
386 Board of Cosmetic Surgery.

387 2. Any duty delegated by a physician, with a patient's
388 informed consent, to be performed during a gluteal fat grafting
389 procedure must be performed under the direct supervision of the
390 physician performing such procedure. Gluteal fat injections must
391 be performed by the physician and may not be delegated.

392 3. Gluteal fat may only be injected into the subcutaneous
393 space of the patient and may not cross the fascia overlying the
394 gluteal muscle. Intramuscular or submuscular fat injections are
395 prohibited.

396 4. When the physician performing a gluteal fat grafting
397 procedure injects fat into the subcutaneous space of the
398 patient, the physician must use ultrasound guidance during the
399 placement and navigation of the canula to ensure that the fat is
400 injected into the subcutaneous space of the patient above the

401 fascia overlying the gluteal muscle. Ultrasound guidance is not
 402 required for other portions of such procedure.

403 (e) An office at which office surgeries will be performed
 404 must be inspected by the department before registration. If the
 405 office refuses the preregistration inspection, the office may
 406 not be registered by the department until completion of an
 407 inspection. If a registered office refuses any subsequent
 408 inspection, the registration of such office shall be immediately
 409 suspended until completion of an inspection by the department.

410 (f) If a procedure in an office surgery setting results in
 411 hospitalization, the type of procedure performed and the
 412 location at which the procedure was performed, if known, must be
 413 included in the hospital intake information for the purpose of
 414 adverse incident reporting.

415 (g) A health care facility that meets the definition of an
 416 ambulatory surgical center as defined in s. 395.002 or a
 417 hospital or an abortion clinic as defined in s. 390.011,
 418 respectively, may not register as an office under this section
 419 or rules adopted by the board.

420 Section 6. Subsection (2) of section 459.0138, Florida
 421 Statutes, is renumbered as subsection (3) and a new subsection
 422 (2) is added to that section, to read:

423 459.0138 Office surgeries.—

424 (2) STANDARD OF PRACTICE.—

425 (a) For purposes of this section, the term:

426 1. "Office surgery" means a surgery performed at an office
427 that primarily serves as a physician's office at which a
428 physician performs surgeries as permitted under this section.
429 The physician's office must be an office at which such physician
430 regularly performs consultations with surgical patients,
431 presurgical examinations, and postoperative monitoring and care
432 related to office surgeries and at which patient records are
433 readily maintained and available.

434 2. "Physician" means a physician or surgeon licensed to
435 practice under this chapter.

436 (b) A physician performing a gluteal fat grafting
437 procedure in an office surgery setting shall adhere to standards
438 of practice pursuant to this subsection and rules adopted by the
439 board. The board may not adopt by rule standards of practice
440 that conflict with this subsection.

441 (c) Office surgeries may not:

442 1. Result in blood loss of more than 10 percent of
443 estimated blood volume in a patient with a normal hemoglobin
444 level;

445 2. Require major or prolonged intracranial, intrathoracic,
446 abdominal, or joint replacement procedures, except for
447 laparoscopic procedures;

448 3. Involve major blood vessels performed with direct
449 visualization by open exposure of the major blood vessel, except
450 for percutaneous endovascular intervention; or

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451 4. Be emergent or life threatening.

452 (d)1. A physician performing a gluteal fat grafting
453 procedure must be a cosmetic surgeon certified by the American
454 Board of Cosmetic Surgery.

455 2. Any duty delegated by a physician, with a patient's
456 informed consent, to be performed during a gluteal fat grafting
457 procedure must be performed under the direct supervision of the
458 physician performing such procedure. Gluteal fat injections must
459 be performed by the physician and may not be delegated.

460 3. Gluteal fat may only be injected into the subcutaneous
461 space of the patient and may not cross the fascia overlying the
462 gluteal muscle. Intramuscular or submuscular fat injections are
463 prohibited.

464 4. When the physician performing a gluteal fat grafting
465 procedure injects fat into the subcutaneous space of the
466 patient, the physician must use ultrasound guidance during the
467 placement and navigation of the canula to ensure that the fat is
468 injected into the subcutaneous space of the patient above the
469 fascia overlying the gluteal muscle. Ultrasound guidance is not
470 required for other portions of such procedure.

471 (e) An office at which office surgeries will be performed
472 must be inspected by the department before registration. If the
473 office refuses the preregistration inspection, the office may
474 not be registered by the department until completion of an
475 inspection. If a registered office refuses any subsequent

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476 inspection, the registration of such office shall be immediately
477 suspended until completion of an inspection by the department.

478 (f) If a procedure in an office surgery setting results in
479 hospitalization, the type of procedure performed and the
480 location at which the procedure was performed, if known, must be
481 included in the hospital intake information for the purpose of
482 adverse incident reporting.

483 (g) A health care facility that meets the definition of an
484 ambulatory surgical center in s. 395.002 or a hospital or an
485 abortion clinic as defined in s. 390.011, respectively, may not
486 register as an office under this section or rules adopted by the
487 board.

488 Section 7. This act shall take effect July 1, 2023.