

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. 408.812, F.S.; creating a cause
 6 of action for an ex parte temporary injunction against
 7 continued unlicensed activity; providing requirements
 8 for such injunction; providing construction;
 9 authorizing the Agency for Health Care Administration
 10 to provide certain records to local law enforcement
 11 and state attorneys' offices under certain
 12 circumstances; amending ss. 458.328 and 459.0138,
 13 F.S.; providing standard of practice requirements for
 14 office surgeries; providing definitions; prohibiting
 15 certain office surgeries; providing physician, office,
 16 and procedure requirements; prohibiting specified
 17 health care facilities from registering as an office;
 18 providing an effective date.

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

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 22 Section 1. Paragraph (o) of subsection (1) of section
 23 400.022, Florida Statutes, is amended to read:
 24 400.022 Residents' rights.—
 25 (1) All licensees of nursing home facilities shall adopt

26 | and make public a statement of the rights and responsibilities
 27 | of the residents of such facilities and shall treat such
 28 | residents in accordance with the provisions of that statement.
 29 | The statement shall assure each resident the following:

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

43 | Section 2. Subsection (6) of section 408.812, Florida
 44 | Statutes, is amended to read:

45 | 408.812 Unlicensed activity.—

46 | (6) In addition to granting injunctive relief pursuant to
 47 | subsection (2), if the agency determines that a person or entity
 48 | is operating or maintaining a provider without obtaining a
 49 | license and determines that a condition exists that poses a
 50 | threat to the health, safety, or welfare of a client of the

51 provider, the person or entity is subject to the same actions
52 and fines imposed against a licensee as specified in this part,
53 authorizing statutes, and agency rules.

54 (a) The agency may petition the circuit court for an ex
55 parte temporary injunction against continued unlicensed activity
56 when agency personnel have verified, through an onsite
57 inspection, that a person or entity is advertising, offering, or
58 providing services that require licensure and has previously
59 received notification from the agency to discontinue such
60 activity.

61 (b) A sworn petition seeking the issuance of an ex parte
62 temporary injunction against continued unlicensed activity shall
63 allege the location of the unlicensed activity, the owners and
64 operators of the unlicensed provider, the type of services that
65 require licensure, and specific facts supporting the conclusion
66 that the respondent is engaged in unlicensed activity, including
67 the date, time, and location at which the respondent was
68 notified to discontinue such activity, whether the respondent
69 prohibited the agency from conducting a subsequent investigation
70 to determine current compliance or noncompliance, any previous
71 injunctive relief granted against the respondent, and any
72 previous agency determination that the respondent has previously
73 been identified as engaging in unlicensed activity.

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

76 (d) Except as provided in s. 90.204, in a hearing ex parte
77 for the purpose of obtaining an ex parte temporary injunction,
78 evidence other than verified pleadings or affidavits by agency
79 personnel or others with firsthand knowledge of the alleged
80 unlicensed activity may not be used as evidence, unless the
81 respondent appears at the hearing. A denial of a petition for an
82 ex parte temporary injunction shall be by written order noting
83 the legal grounds for denial. This paragraph does not affect the
84 agency's right to promptly amend any petition or otherwise be
85 heard in person on any petition in accordance with the Florida
86 Rules of Civil Procedure.

87 (e) If it appears to the court that the respondent is
88 engaged in unlicensed activity and has not discontinued that
89 activity after notification by the agency, the court may grant
90 an ex parte temporary injunction, pending a full hearing, and
91 may grant such relief as the court deems proper, including an ex
92 parte temporary injunction restraining the respondent from
93 advertising, offering, or providing services for which licensure
94 is required under this chapter and authorizing statutes, and
95 requiring the respondent to provide agency personnel with full
96 access to facility personnel, records, and clients for a future
97 inspection of the premises.

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

100 (g) The agency must conduct an inspection of the

101 identified premises within 20 days after issuance of the ex
102 parte temporary injunction to verify the respondent's compliance
103 or noncompliance with the ex parte temporary injunction. If the
104 respondent is found to have complied with the ex parte temporary
105 injunction, the agency shall voluntarily dismiss the ex parte
106 temporary injunction. If the agency identifies that unlicensed
107 activity has continued in violation of the ex parte temporary
108 injunction, the agency may file a petition for permanent
109 injunction within 10 days after identifying the continued
110 noncompliance at which time a full hearing shall be set as soon
111 as practicable. The agency may, along with the filing of a
112 petition for permanent injunction, move for an extension of the
113 ex parte temporary injunction until disposition of the permanent
114 injunction proceedings.

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

118 (i) Remedies in this subsection are not exclusive but are
119 in addition to any other administrative or criminal remedies for
120 unlicensed activity.

121 (j) The agency is not required to exhaust its
122 administrative remedies before seeking the relief provided under
123 this subsection.

124 (k) The agency is authorized to provide any and all
125 records of agency inspections to local law enforcement or state

126 attorneys' offices upon request and without redaction.

127 Section 3. Subsection (2) of section 458.328, Florida
128 Statutes, renumbered as subsection (3), and a new subsection (2)
129 is added to that section to read:

130 458.328 Office surgeries.-

131 (2) STANDARD OF PRACTICE.-

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

133 1. "Office surgery" means a surgery performed at an office
134 that primarily serves as a physician's office at which a
135 physician regularly performs consultations with surgical
136 patients, presurgical examinations, and postoperative monitoring
137 and care related to office surgeries and at which patient
138 records are readily maintained and available.

139 2. "Physician" means a physician or surgeon licensed to
140 practice under this chapter.

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

146 (c) Office surgeries may not:

147 1. Result in blood loss of more than 10 percent of
148 estimated blood volume in a patient with a normal hemoglobin
149 level;

150 2. Require major or prolonged intracranial, intrathoracic,

151 abdominal, or joint replacement procedures, except for
 152 laparoscopic procedures;

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

156 4. Be emergent or life threatening.

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

160 2. Any duty delegated by a physician, with a patient's
 161 informed consent, to be performed during a gluteal fat grafting
 162 procedure must be performed under the direct supervision of the
 163 physician performing such procedure. Gluteal fat injections must
 164 be performed by the physician and may not be delegated.

165 3. Gluteal fat may only be injected into the subcutaneous
 166 space of the patient and may not cross the fascia overlying the
 167 gluteal muscle. Intramuscular or submuscular fat injections are
 168 prohibited.

169 4. When the physician performing a gluteal fat grafting
 170 procedure injects fat into the subcutaneous space of the
 171 patient, the physician must use ultrasound guidance during the
 172 placement and navigation of the canula to ensure that the fat is
 173 injected into the subcutaneous space of the patient above the
 174 fascia overlying the gluteal muscle. Ultrasound guidance is not
 175 required for other portions of such procedure.

176 (e) An office at which office surgeries will be performed
177 must be inspected by the department before registration. If the
178 office refuses the preregistration inspection, the office may
179 not be registered by the department until completion of an
180 inspection. If a registered office refuses any subsequent
181 inspection, the registration of such office shall be immediately
182 suspended until completion of an inspection by the department.

183 (f) If a procedure in an office surgery setting results in
184 hospitalization, the type of procedure performed and the
185 location at which the procedure was performed, if known, must be
186 included in the hospital intake information for the purpose of
187 adverse incident reporting.

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

193 Section 4. Subsection (2) of section 459.0138, Florida
194 Statutes, is renumbered as subsection (3), and a new subsection
195 (2) is added to that section to read:

196 459.0138 Office surgeries.—

197 (2) STANDARD OF PRACTICE.—

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

199 1. "Office surgery" means a surgery performed at an office
200 that primarily serves as a physician's office at which a

201 physician performs surgeries as permitted under this section.
 202 The physician's office must be an office at which such physician
 203 regularly performs consultations with surgical patients,
 204 presurgical examinations, and postoperative monitoring and care
 205 related to office surgeries and at which patient records are
 206 readily maintained and available.

207 2. "Physician" means a physician or surgeon licensed to
 208 practice under this chapter.

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

214 (c) Office surgeries may not:

215 1. Result in blood loss of more than 10 percent of
 216 estimated blood volume in a patient with a normal hemoglobin
 217 level;

218 2. Require major or prolonged intracranial, intrathoracic,
 219 abdominal, or joint replacement procedures, except for
 220 laparoscopic procedures;

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

224 4. Be emergent or life threatening.

225 (d)1. A physician performing a gluteal fat grafting

226 procedure must be a cosmetic surgeon certified by the American
227 Board of Cosmetic Surgery.

228 2. Any duty delegated by a physician, with a patient's
229 informed consent, to be performed during a gluteal fat grafting
230 procedure must be performed under the direct supervision of the
231 physician performing such procedure. Gluteal fat injections must
232 be performed by the physician and may not be delegated.

233 3. Gluteal fat may only be injected into the subcutaneous
234 space of the patient and may not cross the fascia overlying the
235 gluteal muscle. Intramuscular or submuscular fat injections are
236 prohibited.

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238 procedure injects fat into the subcutaneous space of the
239 patient, the physician must use ultrasound guidance during the
240 placement and navigation of the canula to ensure that the fat is
241 injected into the subcutaneous space of the patient above the
242 fascia overlying the gluteal muscle. Ultrasound guidance is not
243 required for other portions of such procedure.

244 (e) An office at which office surgeries will be performed
245 must be inspected by the department before registration. If the
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247 not be registered by the department until completion of an
248 inspection. If a registered office refuses any subsequent
249 inspection, the registration of such office shall be immediately
250 suspended until completion of an inspection by the department.

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251 (f) If a procedure in an office surgery setting results in
252 hospitalization, the type of procedure performed and the
253 location at which the procedure was performed, if known, must be
254 included in the hospital intake information for the purpose of
255 adverse incident reporting.

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

261 Section 5. This act shall take effect July 1, 2023.