

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.; requiring the Department of Health to inspect
 14 specified offices before registration and refuse to
 15 register a new office or immediately suspend the
 16 registration of a registered office that refuses an
 17 inspection for a specified timeframe; prohibiting the
 18 department from registering specified facilities;
 19 providing suspension requirements; providing standard
 20 of practice requirements for office surgeries;
 21 providing definitions; prohibiting certain office
 22 surgeries; providing physician, office, and procedure
 23 requirements; providing an effective date.

24
 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 (6) of section 408.812, Florida Statutes, is amended to read:

408.812 Unlicensed activity.—

51 (6) In addition to granting injunctive relief pursuant to
52 subsection (2), if the agency determines that a person or entity
53 is operating or maintaining a provider without obtaining a
54 license and determines that a condition exists that poses a
55 threat to the health, safety, or welfare of a client of the
56 provider, the person or entity is subject to the same actions
57 and fines imposed against a licensee as specified in this part,
58 authorizing statutes, and agency rules.

59 (a) There is created a cause of action for an ex parte
60 temporary injunction against continued unlicensed activity by a
61 person or entity violating subsection (1), not to exceed 30
62 days.

63 (b) A sworn petition seeking the issuance of an ex parte
64 temporary injunction against continued unlicensed activity shall
65 allege all of the following:

- 66 1. The location of the unlicensed activity.
67 2. The names of the owners and operators of the unlicensed
68 provider.
69 3. The type of services that require licensure.
70 4. The specific facts supporting the conclusion that the
71 unlicensed provider is engaged in unlicensed activity, including
72 the date, time, and location at which the unlicensed provider
73 was notified by the agency to discontinue such activity.
74 5. That agency personnel have verified, through an onsite
75 inspection, that the unlicensed provider is advertising,

76 | offering, or providing services that require licensure.

77 | 6. Whether the unlicensed provider prohibited the agency

78 | from conducting a subsequent investigation to determine current

79 | compliance with applicable laws and rules.

80 | 7. Any previous injunctive relief granted against the

81 | unlicensed provider.

82 | 8. Any previous agency determination that the unlicensed

83 | provider has been identified as engaging in unlicensed activity.

84 | (c) A bond may not be required by the court for entry of

85 | an ex parte temporary injunction.

86 | (d) Except as provided in s. 90.204, in a hearing to

87 | obtain an ex parte temporary injunction, evidence other than

88 | verified pleadings or affidavits by agency personnel or others

89 | with firsthand knowledge of the alleged unlicensed activity may

90 | not be used as evidence, unless the unlicensed provider appears

91 | at the hearing. A denial of a petition for an ex parte temporary

92 | injunction shall specify the grounds for denial in writing.

93 | (e) If the court determines that the unlicensed provider

94 | is engaged in continued unlicensed activity after agency

95 | notification to cease such unlicensed activity, the court may

96 | grant the ex parte temporary injunction restraining the

97 | unlicensed provider from advertising, offering, or providing

98 | services for which licensure is required. The court may also

99 | order the unlicensed provider to provide to agency personnel

100 | access to facility personnel, records, and clients for future

101 inspection of the unlicensed provider's premises.

102 (f) The agency must inspect the unlicensed provider's
 103 premises within 20 days after entry of the ex parte temporary
 104 injunction to verify compliance with such injunction. If the
 105 unlicensed provider is in compliance, the agency shall dismiss
 106 the injunction. If unlicensed activity has continued, the agency
 107 may file a petition for permanent injunction within 10 days
 108 after identifying noncompliance. The agency may also petition to
 109 extend the ex parte temporary injunction until the permanent
 110 injunction is decided.

111 (g) The agency may provide any inspection records to local
 112 law enforcement or a state attorney's office upon request and
 113 without redaction.

114 Section 3. Subsection (2) of section 458.328, Florida
 115 Statutes, is renumbered as subsection (3), paragraphs (a) and
 116 (e) of subsection (1) are amended, and a new subsection (2) is
 117 added to that section, to read:

118 458.328 Office surgeries.—

119 (1) REGISTRATION.—

120 (a) An office in which a physician performs a liposuction
 121 procedure in which more than 1,000 cubic centimeters of
 122 supernatant fat is removed, a Level II office surgery, or a
 123 Level III office surgery must register with the department
 124 ~~unless the office is licensed as a facility under chapter 390 or~~
 125 ~~chapter 395.~~ The department must inspect any such office before

126 registration. The department may not register a facility that
 127 must be licensed under chapter 390 or chapter 395.

128 (e) The department shall inspect a registered office at
 129 least annually, including a review of patient records, to ensure
 130 that the office is in compliance with this section and rules
 131 adopted hereunder unless the office is accredited by a
 132 nationally recognized accrediting agency approved by the board.
 133 The inspection may be unannounced, except for the inspection of
 134 an office that meets the description of a clinic specified in s.
 135 458.3265(1)(a)3.h., and those wholly owned and operated
 136 physician offices described in s. 458.3265(1)(a)3.g. which
 137 perform procedures referenced in s. 458.3265(1)(a)3.h., which
 138 must be announced. The department must refuse to register a new
 139 office or must immediately suspend the registration of a
 140 registered office that refuses an inspection for 14 days. Such
 141 office must be closed during the period of suspension. The
 142 suspension must remain in effect until the department has
 143 completed its inspection.

144 (2) STANDARD OF PRACTICE.—

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

146 1. "Office surgery" means a surgery performed at an office
 147 that primarily serves as a physician's office at which a
 148 physician regularly performs consultations with surgical
 149 patients, presurgical examinations, and postoperative monitoring
 150 and care related to office surgeries and at which patient

151 records are readily maintained and available.

152 2. "Physician" means a physician or surgeon licensed to
 153 practice under this chapter.

154 (b) A physician performing a gluteal fat grafting
 155 procedure in an office surgery setting shall adhere to standards
 156 of practice pursuant to this subsection and rules adopted by the
 157 board.

158 (c) Office surgeries may not:

159 1. Result in blood loss of more than 10 percent of
 160 estimated blood volume in a patient with a normal hemoglobin
 161 level;

162 2. Require major or prolonged intracranial, intrathoracic,
 163 abdominal, or joint replacement procedures, except for
 164 laparoscopic procedures;

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

168 4. Be emergent or life threatening.

169 (d)1. A physician performing a gluteal fat grafting
 170 procedure must be a board-eligible or board-certified plastic
 171 surgeon.

172 2. A physician performing a gluteal fat grafting procedure
 173 must conduct an in-person examination of the patient no later
 174 than 24 hours before the procedure.

175 3. Any duty delegated by a physician, with a patient's

176 informed consent, to be performed during a gluteal fat grafting
177 procedure must be performed under the direct supervision of the
178 physician performing such procedure. Gluteal fat injections must
179 be performed by the physician and may not be delegated.

180 4. Gluteal fat may only be injected into the subcutaneous
181 space of the patient and may not cross the fascia overlying the
182 gluteal muscle. Intramuscular or submuscular fat injections are
183 prohibited.

184 5. When the physician performing a gluteal fat grafting
185 procedure injects fat into the subcutaneous space of the
186 patient, the physician must use ultrasound guidance during the
187 placement and navigation of the canula to ensure that the fat is
188 injected into the subcutaneous space of the patient above the
189 fascia overlying the gluteal muscle. The board may establish
190 minimum technical standards for such ultrasound guidance.
191 Ultrasound guidance is not required for other portions of such
192 procedure.

193 (e) If a procedure in an office surgery setting results in
194 hospitalization, the type of procedure performed and the
195 location at which the procedure was performed, if known, must be
196 included in the hospital intake information for the purpose of
197 adverse incident reporting.

198 Section 4. Subsection (2) of section 459.0138, Florida
199 Statutes, is renumbered as subsection (3), paragraphs (a) and
200 (e) of subsection (1) are amended, and a new subsection (2) is

201 added to that section, to read:

202 459.0138 Office surgeries.—

203 (1) REGISTRATION.—

204 (a) An office in which a physician performs a liposuction
 205 procedure in which more than 1,000 cubic centimeters of
 206 supernatant fat is removed, a Level II office surgery, or a
 207 Level III office surgery must register with the department
 208 ~~unless the office is licensed as a facility under chapter 390 or~~
 209 ~~chapter 395.~~ The department must inspect any such office before
 210 registration. The department may not register a facility that
 211 must be licensed under chapter 390 or chapter 395.

212 (e) The department shall inspect a registered office at
 213 least annually, including a review of patient records, to ensure
 214 that the office is in compliance with this section and rules
 215 adopted hereunder unless the office is accredited by a
 216 nationally recognized accrediting agency approved by the board.
 217 The inspection may be unannounced, except for the inspection of
 218 an office that meets the description of clinic specified in s.
 219 459.0137(1)(a)3.h., and those wholly owned and operated
 220 physician offices described in s. 459.0137(1)(a)3.g. which
 221 perform procedures referenced in s. 459.0137(1)(a)3.h., which
 222 must be announced. The department must refuse to register a new
 223 office or immediately suspend the registration of a registered
 224 office that refuses an inspection for 14 days. Such office must
 225 be closed during the period of suspension. The suspension must

226 remain in effect until the department has completed its
 227 inspection.

228 (2) STANDARD OF PRACTICE.—

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

230 1. "Office surgery" means a surgery performed at an office
 231 that primarily serves as a physician's office at which a
 232 physician performs surgeries as permitted under this section.
 233 The physician's office must be an office at which such physician
 234 regularly performs consultations with surgical patients,
 235 presurgical examinations, and postoperative monitoring and care
 236 related to office surgeries and at which patient records are
 237 readily maintained and available.

238 2. "Physician" means a physician or surgeon licensed to
 239 practice under this chapter.

240 (b) A physician performing a gluteal fat grafting
 241 procedure in an office surgery setting shall adhere to standards
 242 of practice pursuant to this subsection and rules adopted by the
 243 board.

244 (c) Office surgeries may not:

245 1. Result in blood loss of more than 10 percent of
 246 estimated blood volume in a patient with a normal hemoglobin
 247 level;

248 2. Require major or prolonged intracranial, intrathoracic,
 249 abdominal, or joint replacement procedures, except for
 250 laparoscopic procedures;

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

254 4. Be emergent or life threatening.

255 (d)1. A physician performing a gluteal fat grafting
256 procedure must be a board-eligible or board-certified plastic
257 surgeon.

258 2. A physician performing a gluteal fat grafting procedure
259 must conduct an in-person examination of the patient no later
260 than 24 hours before the procedure.

261 3. Any duty delegated by a physician, with a patient's
262 informed consent, to be performed during a gluteal fat grafting
263 procedure must be performed under the direct supervision of the
264 physician performing such procedure. Gluteal fat injections must
265 be performed by the physician and may not be delegated.

266 4. Gluteal fat may only be injected into the subcutaneous
267 space of the patient and may not cross the fascia overlying the
268 gluteal muscle. Intramuscular or submuscular fat injections are
269 prohibited.

270 5. When the physician performing a gluteal fat grafting
271 procedure injects fat into the subcutaneous space of the
272 patient, the physician must use ultrasound guidance during the
273 placement and navigation of the canula to ensure that the fat is
274 injected into the subcutaneous space of the patient above the
275 fascia overlying the gluteal muscle. The board may establish

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276 minimum technical standards for such ultrasound guidance.
277 Ultrasound guidance is not required for other portions of such
278 procedure.

279 (e) If a procedure in an office surgery setting results in
280 hospitalization, the type of procedure performed and the
281 location at which the procedure was performed, if known, must be
282 included in the hospital intake information for the purpose of
283 adverse incident reporting.

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