

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; providing definitions; amending s. 408.812,
 6 F.S.; creating a cause of action for an ex parte
 7 temporary injunction against continued unlicensed
 8 activity; providing requirements for such injunction;
 9 providing construction; authorizing the Agency for
 10 Health Care Administration to provide certain records
 11 to local law enforcement and state attorneys' offices
 12 under certain circumstances; amending ss. 458.328 and
 13 459.0138, F.S.; requiring the Department of Health to
 14 inspect specified offices before registration and
 15 refuse to register a new office or immediately suspend
 16 the registration of a registered office that refuses
 17 an inspection for a specified timeframe; prohibiting
 18 the 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.

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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. For purposes of this paragraph, the terms "sexual abuse," "neglect," and "exploitation" have the same meanings as provided in 42 C.F.R. s. 483.5.

Section 2. Subsection (6) of section 408.812, Florida

51 Statutes, is amended to read:

52 408.812 Unlicensed activity.—

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

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

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

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

76 5. That agency personnel have verified, through an onsite
 77 inspection, that the unlicensed provider is advertising,
 78 offering, or providing services that require licensure.

79 6. Whether the unlicensed provider prohibited the agency
 80 from conducting a subsequent investigation to determine current
 81 compliance with applicable laws and rules.

82 7. Any previous injunctive relief granted against the
 83 unlicensed provider.

84 8. Any previous agency determination that the unlicensed
 85 provider has been identified as engaging in unlicensed activity.

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

88 (d) Except as provided in s. 90.204, in a hearing to
 89 obtain an ex parte temporary injunction, evidence other than
 90 verified pleadings or affidavits by agency personnel or others
 91 with firsthand knowledge of the alleged unlicensed activity may
 92 not be used as evidence, unless the unlicensed provider appears
 93 at the hearing. A denial of a petition for an ex parte temporary
 94 injunction shall specify the grounds for denial in writing.

95 (e) If the court determines that the unlicensed provider
 96 is engaged in continued unlicensed activity after agency
 97 notification to cease such unlicensed activity, the court may
 98 grant the ex parte temporary injunction restraining the
 99 unlicensed provider from advertising, offering, or providing
 100 services for which licensure is required. The court may also

101 order the unlicensed provider to provide to agency personnel
102 access to facility personnel, records, and clients for future
103 inspection of the unlicensed provider's premises.

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

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

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

120 458.328 Office surgeries.—

121 (1) REGISTRATION.—

122 (a) An office in which a physician performs a liposuction
123 procedure in which more than 1,000 cubic centimeters of
124 supernatant fat is removed, a Level II office surgery, or a
125 Level III office surgery must register with the department

126 ~~unless the office is licensed as a facility under chapter 390 or~~
127 ~~chapter 395. The department must inspect any such office before~~
128 ~~registration. The department may not register a facility that~~
129 ~~must be licensed under chapter 390 or chapter 395.~~

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

146 (2) STANDARD OF PRACTICE.-

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

148 1. "Office surgery" means a surgery performed at an office
149 that primarily serves as a physician's office at which a
150 physician regularly performs consultations with surgical

151 patients, presurgical examinations, and postoperative monitoring
152 and care related to office surgeries and at which patient
153 records are readily maintained and available.

154 2. "Physician" means a physician or surgeon licensed to
155 practice under this chapter.

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

160 (c) Office surgeries may not:

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

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

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

170 4. Be emergent or life threatening.

171 (d)1. A physician performing a gluteal fat grafting
172 procedure must have sufficient training, as determined by the
173 board, to perform gluteal fat grafting procedures safely and
174 effectively.

175 2. A physician performing a gluteal fat grafting procedure

176 must conduct an in-person examination of the patient no later
177 than the day before the procedure.

178 3. Any duty delegated by a physician, with a patient's
179 informed consent, to be performed during a gluteal fat grafting
180 procedure must be performed under the direct supervision of the
181 physician performing such procedure. Fat extraction and gluteal
182 fat injections must be performed by the physician and may not be
183 delegated.

184 4. Gluteal fat may only be injected into the subcutaneous
185 space of the patient and may not cross the fascia overlying the
186 gluteal muscle. Intramuscular or submuscular fat injections are
187 prohibited.

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

197 (e) If a procedure in an office surgery setting results in
198 hospitalization, the type of procedure performed and the
199 location at which the procedure was performed, if known, must be
200 included in the hospital intake information for the purpose of

201 adverse incident reporting.

202 (f) An office in which a physician performs gluteal fat
 203 grafting procedures must at all times maintain a ratio of one
 204 physician to one patient during all phases of the procedure,
 205 beginning with the administration of anesthesia to the patient
 206 and concluding with the extubation of the patient. However,
 207 after a physician has commenced, and while he or she is engaged
 208 in, a gluteal fat grafting procedure, the physician may not
 209 commence or engage in another gluteal fat grafting procedure or
 210 any other procedure with another patient at the same time.

211 Section 4. Subsection (2) of section 459.0138, Florida
 212 Statutes, is renumbered as subsection (3), paragraphs (a) and
 213 (e) of subsection (1) are amended, and a new subsection (2) is
 214 added to that section, to read:

215 459.0138 Office surgeries.—

216 (1) REGISTRATION.—

217 (a) An office in which a physician performs a liposuction
 218 procedure in which more than 1,000 cubic centimeters of
 219 supernatant fat is removed, a Level II office surgery, or a
 220 Level III office surgery must register with the department
 221 ~~unless the office is licensed as a facility under chapter 390 or~~
 222 ~~chapter 395.~~ The department must inspect any such office before
 223 registration. The department may not register a facility that
 224 must be licensed under chapter 390 or chapter 395.

225 (e) The department shall inspect a registered office at

226 | least annually, including a review of patient records, to ensure
 227 | that the office is in compliance with this section and rules
 228 | adopted hereunder unless the office is accredited by a
 229 | nationally recognized accrediting agency approved by the board.
 230 | The inspection may be unannounced, except for the inspection of
 231 | an office that meets the description of clinic specified in s.
 232 | 459.0137(1)(a)3.h., and those wholly owned and operated
 233 | physician offices described in s. 459.0137(1)(a)3.g. which
 234 | perform procedures referenced in s. 459.0137(1)(a)3.h., which
 235 | must be announced. The department must refuse to register a new
 236 | office or immediately suspend the registration of a registered
 237 | office that refuses an inspection for 14 days. Such office must
 238 | be closed during the period of suspension. The suspension must
 239 | remain in effect until the department has completed its
 240 | inspection.

241 | (2) STANDARD OF PRACTICE.-

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

243 | 1. "Office surgery" means a surgery performed at an office
 244 | that primarily serves as a physician's office at which a
 245 | physician performs surgeries as permitted under this section.
 246 | The physician's office must be an office at which such physician
 247 | regularly performs consultations with surgical patients,
 248 | presurgical examinations, and postoperative monitoring and care
 249 | related to office surgeries and at which patient records are
 250 | readily maintained and available.

251 2. "Physician" means a physician or surgeon licensed to
252 practice under this chapter.

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

257 (c) Office surgeries may not:

258 1. Result in blood loss of more than 10 percent of
259 estimated blood volume in a patient with a normal hemoglobin
260 level;

261 2. Require major or prolonged intracranial, intrathoracic,
262 abdominal, or joint replacement procedures, except for
263 laparoscopic procedures;

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

267 4. Be emergent or life threatening.

268 (d)1. A physician performing a gluteal fat grafting
269 procedure must have sufficient training, as determined by the
270 board, to perform gluteal fat grafting procedures safely and
271 effectively.

272 2. Any duty delegated by a physician, with a patient's
273 informed consent, to be performed during a gluteal fat grafting
274 procedure must be performed under the direct supervision of the
275 physician performing such procedure. Fat extraction and gluteal

276 fat injections must be performed by the physician and may not be
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279 space of the patient and may not cross the fascia overlying the
280 gluteal muscle. Intramuscular or submuscular fat injections are
281 prohibited.

282 5. When the physician performing a gluteal fat grafting
283 procedure injects fat into the subcutaneous space of the
284 patient, the physician must use ultrasound guidance during the
285 placement and navigation of the canula to ensure that the fat is
286 injected into the subcutaneous space of the patient above the
287 fascia overlying the gluteal muscle. The board may establish
288 minimum technical standards for such ultrasound guidance.
289 Ultrasound guidance is not required for other portions of such
290 procedure.

291 (e) If a procedure in an office surgery setting results in
292 hospitalization, the type of procedure performed and the
293 location at which the procedure was performed, if known, must be
294 included in the hospital intake information for the purpose of
295 adverse incident reporting.

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