

BILL ANALYSIS

S.B. 59
By: Zaffirini
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, state law does not prohibit the use in a residential facility of a restraint on a resident that obstructs the resident's airway, impairs the resident's breathing by putting pressure on the diaphragm or chest, or interferes with the resident's ability to communicate nor are there provisions that establish a "best practices" workgroup. Senate Bill 59 prohibits a particular type of restraint from being used in in-patient facilities that could severely harm a patient and it would establish a "best practices" workgroup.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Interagency Council on Early Childhood Intervention; Texas Department on Aging; Texas Commission on Alcohol and Drug Abuse; Texas Commission for the Blind; Texas Commission for the Deaf and Hard of Hearing; Texas Department of Health; Texas Department of Human Services; Texas Department of Mental Health and Mental Retardation; Texas Rehabilitation Commission; Department of Protective and Regulatory Services; Children's Trust Fund of Texas Council; Texas Health Care Information Council; and the Texas Juvenile Probation Commission in SECTION 1 (Section 322.053, Health and Safety Code); and to each health and human services agency that regulates the care or treatment of a resident at a facility in SECTION 1 (Section 322.052, Health and Safety Code) of this bill.

ANALYSIS

SECTION 1. Amends Title 4G, Health and Safety Code, by adding Chapter 322, as follows:

Chapter 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN HEALTH CARE FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

Section 322.001. DEFINITIONS. Defines "facility," "health and human services agency," and "seclusion."

[Reserves Sections 322.002-322.050 for expansion.]

SUBCHAPTER B. RESTRAINTS AND SECLUSION

Section 322.051. CERTAIN RESTRAINTS PROHIBITED. (a) Prohibits a person from administering certain restraints to a resident of a facility. Adds a new condition for certain restraint holds.

(b) Authorizes a person, under certain conditions, to use a prone or supine hold on the resident of a facility.

Section 322.052. ADOPTION OF RESTRAINT AND SECLUSION PROCEDURES. (a) Requires each health and human services agency that regulates the care or treatment of a resident at a facility to adopt rules regarding the use of restraints and seclusion.

(b) Requires the rules to permit prone and supine holds for use on a resident of a facility only as transitional holds.

(c) Authorizes a facility to adopt procedures for the facility's use of restraint and seclusion on a resident that regulate the use of restraint and seclusion more restrictively than is required by a rule of the regulating health and human services agency.

Section 322.053. NOTIFICATION. Requires a health and human services agency to adopt rules to ensure that each facility resident, or the resident's legally authorized representative, is notified of the agency's rules and policies related to restraints and seclusion.

Section 322.054. MEDICAID WAIVER PROGRAM. Requires a contractor that provides supervised living under a Medicaid waiver program for a facility to comply with this chapter and rules adopted under

this chapter in the same manner as a facility.

SECTION 2. Amends Chapter 242B, Health and Safety Code, by adding Section 242.0373, as follows: Section 242.0373. RESTRAINT AND SECLUSION. Requires a person providing services to a resident of an institution to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 3. Amends Chapter 247B, Health and Safety Code, by adding Section 247.0255, as follows: Section 247.0255. RESTRAINT AND SECLUSION. Requires a person providing services to a resident of an assisted living facility to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 4. Amends Chapter 252A, Health and Safety Code, by adding Section 252.0085, as follows: Section 252.0085. RESTRAINT AND SECLUSION. Requires a person providing services to a resident of a facility licensed by the Texas Department of Human Services under this chapter or operated by the Texas Department of Mental Health and Mental Retardation and exempt under Section 252.003 (Intermediate Care Facilities for the Mentally Retarded-Exemptions) from the licensing requirements of this chapter to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 5. Amends Chapter 464A, Health and Safety Code, by adding Section 464.0095, as follows: Section 464.0095. RESTRAINT AND SECLUSION. Requires a person providing services to a program client at a treatment facility to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 6. Amends Chapter 571, Health and Safety Code, by adding Section 571.0067, as follows: Section 571.0067. RESTRAINT AND SECLUSION. Requires a person providing services to a patient of a mental hospital or mental health facility to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 7. Amends Chapter 42C, Human Resources Code, by adding Section 42.0422, as follows: Section 42.0422. RESTRAINT AND SECLUSION. Requires a person providing services to a resident of a child-care facility that is a residential treatment center or a child-care institution serving children with mental retardation to comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

SECTION 8. (a) Defines "commissioner," "emergency," "facility," and "health and human services agency."

(b) Requires the commissioner of health and human services (commissioner), by November 1, 2003, to establish a work group (work group) to develop and recommend the best practices in policy, training, safety, and risk management for a health and human service agency to adopt to govern the management of facility residents behavior.

(c) Requires the commissioner to determine the number of members to serve on the work group. Requires the commissioner to appoint certain persons as members of the work group.

(d) Requires the work group to conduct a study on certain objectives.

(e) Requires the work group to meet certain requirements, while developing the best practices.

(f) Requires each health and human services agency, by November 1, 2004, to adopt rules necessary to implement Sections 322.051, 322.052, and 322.053, Health and Safety Code, as added by this Act.

(g) Requires the commissioner, by November 1, 2004, to file a report with the appropriate committees of the senate and the house of representatives. Requires the report to describe the work group's recommended best practices.

(h) Requires each health and human services agency, by November 1, 2004, to adopt rules necessary to implement the best practices recommended by the work group.

(i) Requires the commissioner, by January 1, 2005, to file a report with the appropriate committees of the senate and the house of representatives for consideration by the 79th legislature. Requires the report to describe the actions taken by health and human services agencies implementing the best practices identified by the work group.

SECTION 9. Effective date: September 1, 2003.

EFFECTIVE DATE

September 1, 2003.