

By: Zaffirini

S.B. No. 59

A BILL TO BE ENTITLED

AN ACT

relating to the management of behavior of residents of certain facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle G, Title 4, Health and Safety Code, is amended by adding Chapter 322 to read as follows:

CHAPTER 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN

HEALTH CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 322.001. DEFINITIONS. In this chapter:

(1) "Facility" means:

(A) a child-care institution, as defined by Section 42.002, Human Resources Code, including a state-operated facility, that is a residential treatment center or a child-care institution serving children with mental retardation;

(B) an intermediate care facility licensed by the Texas Department of Human Services under Chapter 252 or operated by the Texas Department of Mental Health and Mental Retardation and exempt under Section 252.003 from the licensing requirements of that chapter;

(C) a mental hospital or mental health facility, as defined by Section 571.003;

(D) an institution, as defined by Section 242.002;

1                   (E) an assisted living facility, as defined by  
2 Section 247.002; or

3                   (F) a treatment facility, as defined by Section  
4 464.001.

5                   (2) "Health and human services agency" means an agency  
6 listed in Section 531.001, Government Code.

7                   (3) "Seclusion" means the involuntary separation of a  
8 resident from other residents alone in any area from which the  
9 resident is prevented from leaving.

10                   [Sections 322.002–322.050 reserved for expansion]

11                   SUBCHAPTER B. RESTRAINTS AND SECLUSION

12                   Sec. 322.051. CERTAIN RESTRAINTS PROHIBITED. (a) A person  
13 may not administer a restraint to a resident of a facility that:

14                   (1) obstructs the resident's airway;

15                   (2) impairs the resident's breathing by putting  
16 pressure on the torso; or

17                   (3) interferes with the resident's ability to  
18 communicate.

19                   (b) A person may use a prone or supine hold on the resident  
20 of a facility only if the person:

21                   (1) limits the hold to no longer than the time period  
22 specified by rules adopted under Section 322.052;

23                   (2) uses the hold only as a last resort when other less  
24 restrictive interventions are ineffective under the circumstances;  
25 and

26                   (3) uses the hold only when a staff member ensures the  
27 resident's breathing is not impaired.

1       Sec. 322.052. ADOPTION OF RESTRAINT AND SECLUSION  
2 PROCEDURES. (a) Each health and human services agency that  
3 regulates the care or treatment of a resident at a facility shall  
4 adopt rules to:

5           (1) define acceptable restraint holds that minimize  
6 the risk of harm to a facility resident in accordance with this  
7 subchapter; and

8           (2) govern the use of seclusion of facility residents.

9       (b) The rules must permit prone and supine holds only as  
10 transitional holds for use on a resident of a facility.

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

15       Sec. 322.053. NOTIFICATION. A health and human services  
16 agency shall adopt rules to ensure that each facility resident and  
17 the resident's legally authorized representative is notified of the  
18 agency's rules and policies related to restraints and seclusion.

19       Sec. 322.054. MEDICAID WAIVER PROGRAM. A contractor that  
20 provides supervised living under a Medicaid waiver program for a  
21 facility shall comply with this chapter and rules adopted under  
22 this chapter in the same manner as a facility.

23       SECTION 2. Subchapter B, Chapter 242, Health and Safety  
24 Code, is amended by adding Section 242.0373 to read as follows:

25       Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing  
26 services to a resident of an institution shall comply with Chapter  
27 322 and the rules adopted under that chapter.

1 SECTION 3. Subchapter B, Chapter 247, Health and Safety  
2 Code, is amended by adding Section 247.0255 to read as follows:

3 Sec. 247.0255. RESTRAINT AND SECLUSION. A person providing  
4 services to a resident of an assisted living facility shall comply  
5 with Chapter 322 and the rules adopted under that chapter.

6 SECTION 4. Subchapter A, Chapter 252, Health and Safety  
7 Code, is amended by adding Section 252.0085 to read as follows:

8 Sec. 252.0085. RESTRAINT AND SECLUSION. A person providing  
9 services to a resident of a facility licensed by the department  
10 under this chapter or operated by the Texas Department of Mental  
11 Health and Mental Retardation and exempt under Section 252.003 from  
12 the licensing requirements of this chapter shall comply with  
13 Chapter 322 and the rules adopted under that chapter.

14 SECTION 5. Subchapter A, Chapter 464, Health and Safety  
15 Code, is amended by adding Section 464.0095 to read as follows:

16 Sec. 464.0095. RESTRAINT AND SECLUSION. A person providing  
17 services to a program client at a treatment facility shall comply  
18 with Chapter 322 and the rules adopted under that chapter.

19 SECTION 6. Chapter 571, Health and Safety Code, is amended  
20 by adding Section 571.0067 to read as follows:

21 Sec. 571.0067. RESTRAINT AND SECLUSION. A person providing  
22 services to a patient of a mental hospital or mental health facility  
23 shall comply with Chapter 322 and the rules adopted under that  
24 chapter.

25 SECTION 7. Subchapter C, Chapter 42, Human Resources Code,  
26 is amended by adding Section 42.0422 to read as follows:

27 Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing

1 services to a resident of a child-care institution, including a  
2 state-operated facility that is a residential treatment center or a  
3 child-care institution serving children with mental retardation  
4 shall comply with Chapter 322, Health and Safety Code, and the rules  
5 adopted under that chapter.

6 SECTION 8. (a) In this section:

7 (1) "Commissioner" means the commissioner of health  
8 and human services.

9 (2) "Emergency" means a situation in which attempted  
10 preventive de-escalatory or redirection techniques have not  
11 effectively reduced the potential for injury and it is immediately  
12 necessary to intervene to prevent:

13 (A) imminent probable death or substantial  
14 bodily harm to the person because the person overtly or continually  
15 is threatening to or attempting to commit suicide or serious bodily  
16 harm; or

17 (B) imminent physical harm to another because the  
18 person overtly or continually makes or commits threats, attempts,  
19 or other acts.

20 (3) "Facility" has the meaning assigned by Section  
21 322.001, Health and Safety Code, as added by this Act.

22 (4) "Health and human services agency" means a health  
23 and human services agency listed in Section 531.001, Government  
24 Code, that regulates the care or treatment of a resident of a  
25 facility.

26 (b) The commissioner shall, not later than November 1, 2003,  
27 establish a work group to develop and recommend best practices in

1 policy, training, safety, and risk management for a health and  
2 human services agency to adopt to govern the management of facility  
3 residents' behavior.

4 (c) The commissioner shall determine the number of members  
5 to serve on the work group. The commissioner shall appoint as  
6 members of the work group:

7 (1) a representative of the Texas Department of  
8 Health;

9 (2) a representative of the Texas Department of Human  
10 Services;

11 (3) a representative of the Texas Department of Mental  
12 Health and Mental Retardation;

13 (4) a representative of the Department of Protective  
14 and Regulatory Services;

15 (5) a representative of the Texas Commission on  
16 Alcohol and Drug Abuse; and

17 (6) additional members who are recognized experts or  
18 who represent the interest of residents, including advocates,  
19 family members, physicians, representatives of hospitals licensed  
20 under Chapter 241 or 577, Health and Safety Code, social workers,  
21 and psychiatric nurses.

22 (d) The work group shall:

23 (1) make recommendations for the development of a  
24 comprehensive reporting system that:

25 (A) collects and analyzes data related to the use  
26 of:

27 (i) behavioral and physical interventions

1 by employees of a facility to manage the behavior of the residents  
2 of a facility in an emergency; and

3 (ii) medication administered by employees  
4 to a resident without the resident's consent in an emergency;

5 (B) complies with federal reporting  
6 requirements;

7 (C) documents the death or serious injury of a  
8 facility resident related to physical intervention or restraint,  
9 including the administration of medication, by an employee; and

10 (D) documents the death or serious injury of an  
11 employee during a physical intervention or restraint;

12 (2) make recommendations to prevent the death of or  
13 serious injury to residents of a facility related to physical  
14 intervention or restraint, including the administration of  
15 medication;

16 (3) recommend de-escalation techniques and minimum  
17 standards to manage the behavior of the residents of a facility;

18 (4) identify best practices for verbal, behavioral,  
19 and physical interventions by employees that include specific holds  
20 and techniques for the physical restraint of facility residents;

21 (5) recommend best practices related to specific  
22 populations, including any consideration that should be given to a  
23 facility's community or institutional setting; and

24 (6) recommend best practices related to seclusion of  
25 residents.

26 (e) In developing the best practices, the work group shall:

27 (1) focus on the verbal, behavioral, and physical

1 interventions used by facility employees to manage the behavior of  
2 the residents of a facility; and

3 (2) ensure uniformity in definitions, reporting, and  
4 training used by health and human services agencies.

5 (f) Not later than November 1, 2004, each health and human  
6 services agency shall adopt rules necessary to implement Sections  
7 322.051, 322.052, and 322.053, Health and Safety Code, as added by  
8 this Act.

9 (g) Not later than November 1, 2004, the commissioner shall  
10 file a report with the appropriate committees of the senate and the  
11 house of representatives. The report must describe the work  
12 group's recommended best practices.

13 (h) Not later than November 1, 2004, each health and human  
14 services agency shall adopt rules necessary to implement the best  
15 practices recommended by the work group.

16 (i) Not later than January 1, 2005, the commissioner shall  
17 file a report with the appropriate committees of the senate and the  
18 house of representatives for consideration by the 79th Legislature.  
19 The report must describe the actions taken by health and human  
20 services agencies to implement the best practices identified by the  
21 work group, including appropriate staff and training.

22 SECTION 9. This Act takes effect September 1, 2003.