

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                   SUBCHAPTER B. RESTRAINTS AND SECLUSION

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

10                   (1) obstructs the resident's airway, including a  
11 procedure that places anything in, on, or over the resident's mouth  
12 or nose;

13                   (2) impairs the resident's breathing by putting  
14 pressure on the diaphragm or chest; or

15                   (3) interferes with the resident's ability to  
16 communicate.

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

19                   (1) quickly restores the resident to a standing,  
20 sitting, or side position;

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

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

25                   (4) uses the hold only when an observer, who is trained  
26 to identify the risks associated with positional, compression, or  
27 restraint asphyxiation and with prone and supine holds and who is

1 not involved in the restraint, is present to ensure the resident is  
2 not at risk of serious injury or death.

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

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

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

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

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

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

20 Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing  
21 services to a resident of an institution shall comply with Chapter  
22 322 and the rules adopted under that chapter.

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

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

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

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

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

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

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

16 Sec. 571.0067. RESTRAINT AND SECLUSION. A person providing  
17 services to a patient of a mental hospital or mental health facility  
18 shall comply with Chapter 322 and the rules adopted under that  
19 chapter.

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

22 Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing  
23 services to a resident of a child-care institution, including a  
24 state-operated facility that is a residential treatment center or a  
25 child-care institution serving children with mental retardation  
26 shall comply with Chapter 322, Health and Safety Code, and the rules  
27 adopted under that chapter.

SECTION 8. (a) In this section:

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

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

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

(b) The commissioner shall, not later than November 1, 2003, establish an interagency work group to develop and recommend best practices in policy, training, safety, and risk management for a health and human services agency to use in managing the behavior of the residents of a facility.

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

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

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

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

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

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

1           (6) additional members who are recognized experts or  
2 who represent the interest of residents.

3           (d) The work group shall study and make recommendations on:

4                 (1) developing a comprehensive reporting system that:

5                         (A) collects and analyzes data related to the use  
6 of verbal, behavioral, and physical interventions by employees of a  
7 health and human services agency to manage the behavior of the  
8 residents of a facility;

9                         (B) complies with federal reporting  
10 requirements; and

11                        (C) documents the death or serious injury of a  
12 facility resident related to physical intervention or restraint by  
13 an employee;

14                 (2) preventing the death of or serious injury to  
15 residents of a facility related to physical intervention or  
16 restraint;

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

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

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

26                 (6) developing best practices related to seclusion of  
27 residents.

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

2 (1) focus on the verbal, behavioral, and physical  
3 interventions used by facility employees to manage the behavior of  
4 the residents of a facility; and

5 (2) support uniformity in definitions, reporting, and  
6 training used by health and human services agencies.

7 (f) Not later than March 1, 2004, each health and human  
8 services agency shall adopt rules necessary to implement Chapter  
9 322, Health and Safety Code, as added by this Act.

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

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

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

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