

1-1 By: Zaffirini S.B. No. 59
1-2 (In the Senate - Filed November 12, 2002; January 27, 2003,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; April 9, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 April 9, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 59 By: Zaffirini
1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the management of behavior of residents of certain
1-11 facilities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle G, Title 4, Health and Safety Code, is
1-14 amended by adding Chapter 322 to read as follows:

1-15 CHAPTER 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN
1-16 HEALTH CARE FACILITIES

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 322.001. DEFINITIONS. In this chapter:

1-19 (1) "Facility" means:

1-20 (A) a child-care institution, as defined by
1-21 Section 42.002, Human Resources Code, including a state-operated
1-22 facility, that is a residential treatment center or a child-care
1-23 institution serving children with mental retardation;

1-24 (B) an intermediate care facility licensed by the
1-25 Texas Department of Human Services under Chapter 252 or operated by
1-26 the Texas Department of Mental Health and Mental Retardation and
1-27 exempt under Section 252.003 from the licensing requirements of
1-28 that chapter;

1-29 (C) a mental hospital or mental health facility,
1-30 as defined by Section 571.003;

1-31 (D) an institution, as defined by Section
1-32 242.002;

1-33 (E) an assisted living facility, as defined by
1-34 Section 247.002; or

1-35 (F) a treatment facility, as defined by Section
1-36 464.001.

1-37 (2) "Health and human services agency" means an agency
1-38 listed in Section 531.001, Government Code.

1-39 (3) "Seclusion" means the involuntary separation of a
1-40 resident from other residents alone in any area from which the
1-41 resident is prevented from leaving.

1-42 [Sections 322.002-322.050 reserved for expansion]

1-43 SUBCHAPTER B. RESTRAINTS AND SECLUSION

1-44 Sec. 322.051. CERTAIN RESTRAINTS PROHIBITED. (a) A person
1-45 may not administer a restraint to a resident of a facility that:

1-46 (1) obstructs the resident's airway;

1-47 (2) impairs the resident's breathing by putting
1-48 pressure on the torso; or

1-49 (3) interferes with the resident's ability to
1-50 communicate.

1-51 (b) A person may use a prone or supine hold on the resident
1-52 of a facility only if the person:

1-53 (1) limits the hold to no longer than the time period
1-54 specified by rules adopted under Section 322.052;

1-55 (2) uses the hold only as a last resort when other less
1-56 restrictive interventions are ineffective under the circumstances;
1-57 and

1-58 (3) uses the hold only when a staff member ensures the
1-59 resident's breathing is not impaired.

1-60 Sec. 322.052. ADOPTION OF RESTRAINT AND SECLUSION
1-61 PROCEDURES. (a) Each health and human services agency that
1-62 regulates the care or treatment of a resident at a facility shall
1-63 adopt rules to:

2-1 (1) define acceptable restraint holds that minimize
2-2 the risk of harm to a facility resident in accordance with this
2-3 subchapter; and

2-4 (2) govern the use of seclusion of facility residents.

2-5 (b) The rules must permit prone and supine holds only as
2-6 transitional holds for use on a resident of a facility.

2-7 (c) A facility may adopt procedures for the facility's use
2-8 of restraint and seclusion on a resident that regulate the use of
2-9 restraint and seclusion more restrictively than is required by a
2-10 rule of the regulating health and human services agency.

2-11 Sec. 322.053. NOTIFICATION. A health and human services
2-12 agency shall adopt rules to ensure that each facility resident and
2-13 the resident's legally authorized representative is notified of the
2-14 agency's rules and policies related to restraints and seclusion.

2-15 Sec. 322.054. MEDICAID WAIVER PROGRAM. A contractor that
2-16 provides supervised living under a Medicaid waiver program for a
2-17 facility shall comply with this chapter and rules adopted under
2-18 this chapter in the same manner as a facility.

2-19 SECTION 2. Subchapter B, Chapter 242, Health and Safety
2-20 Code, is amended by adding Section 242.0373 to read as follows:

2-21 Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing
2-22 services to a resident of an institution shall comply with Chapter
2-23 322 and the rules adopted under that chapter.

2-24 SECTION 3. Subchapter B, Chapter 247, Health and Safety
2-25 Code, is amended by adding Section 247.0255 to read as follows:

2-26 Sec. 247.0255. RESTRAINT AND SECLUSION. A person providing
2-27 services to a resident of an assisted living facility shall comply
2-28 with Chapter 322 and the rules adopted under that chapter.

2-29 SECTION 4. Subchapter A, Chapter 252, Health and Safety
2-30 Code, is amended by adding Section 252.0085 to read as follows:

2-31 Sec. 252.0085. RESTRAINT AND SECLUSION. A person providing
2-32 services to a resident of a facility licensed by the department
2-33 under this chapter or operated by the Texas Department of Mental
2-34 Health and Mental Retardation and exempt under Section 252.003 from
2-35 the licensing requirements of this chapter shall comply with
2-36 Chapter 322 and the rules adopted under that chapter.

2-37 SECTION 5. Subchapter A, Chapter 464, Health and Safety
2-38 Code, is amended by adding Section 464.0095 to read as follows:

2-39 Sec. 464.0095. RESTRAINT AND SECLUSION. A person providing
2-40 services to a program client at a treatment facility shall comply
2-41 with Chapter 322 and the rules adopted under that chapter.

2-42 SECTION 6. Chapter 571, Health and Safety Code, is amended
2-43 by adding Section 571.0067 to read as follows:

2-44 Sec. 571.0067. RESTRAINT AND SECLUSION. A person providing
2-45 services to a patient of a mental hospital or mental health facility
2-46 shall comply with Chapter 322 and the rules adopted under that
2-47 chapter.

2-48 SECTION 7. Subchapter C, Chapter 42, Human Resources Code,
2-49 is amended by adding Section 42.0422 to read as follows:

2-50 Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing
2-51 services to a resident of a child-care institution, including a
2-52 state-operated facility that is a residential treatment center or a
2-53 child-care institution serving children with mental retardation
2-54 shall comply with Chapter 322, Health and Safety Code, and the rules
2-55 adopted under that chapter.

2-56 SECTION 8. (a) In this section:

2-57 (1) "Commissioner" means the commissioner of health
2-58 and human services.

2-59 (2) "Emergency" means a situation in which attempted
2-60 preventive de-escalatory or redirection techniques have not
2-61 effectively reduced the potential for injury and it is immediately
2-62 necessary to intervene to prevent:

2-63 (A) imminent probable death or substantial
2-64 bodily harm to the person because the person overtly or continually
2-65 is threatening to or attempting to commit suicide or serious bodily
2-66 harm; or

2-67 (B) imminent physical harm to another because the
2-68 person overtly or continually makes or commits threats, attempts,
2-69 or other acts.

3-1 (3) "Facility" has the meaning assigned by Section
3-2 322.001, Health and Safety Code, as added by this Act.
3-3 (4) "Health and human services agency" means a health
3-4 and human services agency listed in Section 531.001, Government
3-5 Code, that regulates the care or treatment of a resident of a
3-6 facility.
3-7 (b) The commissioner shall, not later than November 1, 2003,
3-8 establish a work group to develop and recommend best practices in
3-9 policy, training, safety, and risk management for a health and
3-10 human services agency to adopt to govern the management of facility
3-11 residents' behavior.
3-12 (c) The commissioner shall determine the number of members
3-13 to serve on the work group. The commissioner shall appoint as
3-14 members of the work group:
3-15 (1) a representative of the Texas Department of
3-16 Health;
3-17 (2) a representative of the Texas Department of Human
3-18 Services;
3-19 (3) a representative of the Texas Department of Mental
3-20 Health and Mental Retardation;
3-21 (4) a representative of the Department of Protective
3-22 and Regulatory Services;
3-23 (5) a representative of the Texas Commission on
3-24 Alcohol and Drug Abuse; and
3-25 (6) additional members who are recognized experts or
3-26 who represent the interest of residents, including advocates,
3-27 family members, physicians, representatives of hospitals licensed
3-28 under Chapter 241 or 577, Health and Safety Code, social workers,
3-29 and psychiatric nurses.
3-30 (d) The work group shall conduct a study and shall:
3-31 (1) develop a comprehensive reporting system that:
3-32 (A) collects and analyzes data related to the use
3-33 of:
3-34 (i) behavioral and physical interventions
3-35 by employees of a facility to manage the behavior of the residents
3-36 of a facility in an emergency; and
3-37 (ii) medication administered by employees
3-38 to a resident without the resident's consent in an emergency;
3-39 (B) complies with federal reporting
3-40 requirements;
3-41 (C) documents the death or serious injury of a
3-42 facility resident related to physical intervention or restraint,
3-43 including the administration of medication, by an employee; and
3-44 (D) documents the death or serious injury of an
3-45 employee during a physical intervention or restraint;
3-46 (2) make recommendations to prevent the death of or
3-47 serious injury to residents of a facility related to physical
3-48 intervention or restraint, including the administration of
3-49 medication;
3-50 (3) recommend de-escalation techniques and minimum
3-51 standards to manage the behavior of the residents of a facility;
3-52 (4) identify best practices for verbal, behavioral,
3-53 and physical interventions by employees that include specific holds
3-54 and techniques for the physical restraint of facility residents;
3-55 (5) recommend best practices related to specific
3-56 populations, including any consideration that should be given to a
3-57 facility's community or institutional setting; and
3-58 (6) recommend best practices related to seclusion of
3-59 residents.
3-60 (e) In developing the best practices, the work group shall:
3-61 (1) focus on the verbal, behavioral, and physical
3-62 interventions used by facility employees to manage the behavior of
3-63 the residents of a facility; and
3-64 (2) ensure uniformity in definitions, reporting, and
3-65 training used by health and human services agencies.
3-66 (f) Not later than November 1, 2004, each health and human
3-67 services agency shall adopt rules necessary to implement Sections
3-68 322.051, 322.052, and 322.053, Health and Safety Code, as added by
3-69 this Act.

4-1 (g) Not later than November 1, 2004, the commissioner shall
4-2 file a report with the appropriate committees of the senate and the
4-3 house of representatives. The report must describe the work
4-4 group's recommended best practices.

4-5 (h) Not later than November 1, 2004, each health and human
4-6 services agency shall adopt rules necessary to implement the best
4-7 practices recommended by the work group.

4-8 (i) Not later than January 1, 2005, the commissioner shall
4-9 file a report with the appropriate committees of the senate and the
4-10 house of representatives for consideration by the 79th Legislature.
4-11 The report must describe the actions taken by health and human
4-12 services agencies to implement the best practices identified by the
4-13 work group, including appropriate staff and training.

4-14 SECTION 9. This Act takes effect September 1, 2003.

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