

BILL ANALYSIS

S.B. 325
By: Zaffirini
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Injuries and deaths following a personal restraint have gained media attention throughout the country. Deaths involving the use of emergency interventions, particularly a personal or mechanical restraint, have occurred on airplanes, in schools, and in residential facilities. Although the use of behavioral interventions are sometimes necessary and appropriate to protect an individual or someone else, considering the possible unintended consequences to staff as well as residents, it is appropriate for the State to make an effort to better understand the context in which these interventions are used, and to assist providers in using less restrictive alternatives whenever possible.

While state agencies all indicate a desire to reduce the use of restraints and seclusions, few have systems by which to collect and analyze data on the frequency of usage. The development of a data collection system that can be used across agencies and over time requires a common language, common data collection techniques, and uniform minimum standards. The purpose of this legislation is to begin the dialogue that could lead to that type of a system being developed.

S.B. 325 includes provisions relating to:

- best practice standards for verbal, behavioral, and physical interventions;
- prohibition of certain restraint practices that have been found to be harmful;
- prohibition of retaliation associated with complaints about misuse of restraints or seclusion;
- establishment of a workgroup that will make recommendations related to uniform definitions, data collection, and minimum standards on the use of behavioral interventions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 and SECTION 8 of this bill.

ANALYSIS

The bill adds new Chapter 322 to the Health and Safety Code.

In summary, Chapter 322:

- includes a "definitions" section;
- describes certain types of restraints that are limited or prohibited, and exempts certain small facilities and providers from one of the provisions;
- requires the adoption of rules by the HHSC executive commissioner, for each health and human services agency that regulates the care or treatment of a resident at a covered facility, that define acceptable restraint holds that minimize the risk of harm, that govern the use of seclusion of facility residents, that develop practices to decrease the frequency of the use of restraint and seclusion, and that permit facilities to adopt procedures that regulate the use of restraints and seclusion that are more restrictive than the rules of the regulating health and human services agency;

S.B. 325 79(R)

- requires notification of residents and their legally authorized representatives of the rules and policies related to restraints and seclusion;
- prohibits retaliation against a person for making a good faith complaint relating to the misuse of restraint or seclusion, prohibits retaliation against a client or resident because someone filed a complaint on behalf of that person, authorizes certain sanctions against a facility that violates these provisions, and describes certain due process rights associated with the imposition of sanctions ; and
- requires a Medicaid waiver program provider to comply with Chapter 322 and rules adopted under the chapter.

The bill adds provisions to various chapters of the Health and Safety Code and a chapter of the Human Resources Code that serve to require compliance with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

The bill includes a section establishing a work group to recommend the best practices in policy, training, safety, and risk management for the Texas Youth Commission, the Texas Juvenile Probation Commission, or a health and human services agency to adopt to govern the management of facility residents' behavior. The section includes provisions relating to the following:

- definitions;
- the composition of the work group;
- the matters which the work group is to study and with respect to which the work group is to make recommendations;
- timelines for establishing the work group, for adopting rules necessary to implement Chapter 322, Health and Safety Code, for filing a report describing the work group's recommended best practices with appropriate legislative committees, for adopting rules necessary to implement the best practices recommended by the work group, and for filing with appropriate legislative committees a report describing actions taken by the Texas Youth Commission, the Texas Juvenile Probation Commission, and health and human services agencies to implement the best practices recommended by the work group.

EFFECTIVE DATE

September 1, 2005