

By: Zaffirini

S.B. No. 325

A BILL TO BE ENTITLED

AN ACT

relating to the management of behavior of residents of certain facilities; providing an administrative penalty.

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 Department of Aging and Disability Services under Chapter 252 or operated by that department 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;

(E) an assisted living facility, as defined by

1 Section 247.002; or

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

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

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

9 [Sections 322.002-322.050 reserved for expansion]

10 SUBCHAPTER B. RESTRAINTS AND SECLUSION

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

13 (1) obstructs the resident's airway, including a
14 procedure that places anything in, on, or over the resident's mouth
15 or nose;

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

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

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

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

24 (2) uses the hold only as a last resort when other less
25 restrictive interventions have proven to be ineffective; and

26 (3) uses the hold only when an observer, who is trained
27 to identify the risks associated with positional, compression, or

1 restraint asphyxiation and with prone and supine holds and who is
2 not involved in the restraint, is ensuring the resident's breathing
3 is not impaired.

4 (c) Small residential facilities and small residential
5 service providers are exempt from Subsection (b)(3).

6 Sec. 322.052. ADOPTION OF RESTRAINT AND SECLUSION
7 PROCEDURES. (a) For each health and human services agency that
8 regulates the care or treatment of a resident at a facility, the
9 executive commissioner of the Health and Human Services Commission
10 shall adopt rules to:

11 (1) define acceptable restraint holds that minimize
12 the risk of harm to a facility resident in accordance with this
13 subchapter;

14 (2) govern the use of seclusion of facility residents;
15 and

16 (3) develop practices to decrease the frequency of the
17 use of restraint and seclusion.

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

20 (c) A facility may adopt procedures for the facility's use
21 of restraint and seclusion on a resident that regulate, more
22 restrictively than is required by a rule of the regulating health
23 and human services agency, the use of restraint and seclusion.

24 Sec. 322.053. NOTIFICATION. The executive commissioner of
25 the Health and Human Services Commission by rule shall ensure that
26 each resident at a facility regulated by a health and human services
27 agency and the resident's legally authorized representative are

1 notified of the rules and policies related to restraints and
2 seclusion.

3 Sec. 322.054. RETALIATION PROHIBITED. (a) A facility may
4 not discharge or otherwise retaliate against:

5 (1) an employee, client, resident, or other person
6 because the employee, client, resident, or other person files a
7 complaint, presents a grievance, or otherwise provides in good
8 faith information relating to the misuse of restraint or seclusion
9 at the facility; or

10 (2) a client or resident of the facility because
11 someone on behalf of the client or resident files a complaint,
12 presents a grievance, or otherwise provides in good faith
13 information relating to the misuse of restraint or seclusion at the
14 facility.

15 (b) A health and human services agency that registers or
16 otherwise licenses or certifies a facility may:

17 (1) revoke, suspend, or refuse to renew the license,
18 registration, or certification of a facility that violates
19 Subsection (a); or

20 (2) place on probation a facility that violates
21 Subsection (a).

22 (c) A health and human services agency that regulates a
23 facility and that is authorized to impose an administrative penalty
24 against the facility under other law may impose an administrative
25 penalty against the facility for violating Subsection (a). Each
26 day a violation continues or occurs is a separate violation for
27 purposes of imposing a penalty. The amount of the penalty may not

1 exceed the maximum amount that the agency may impose against the
2 facility under the other law. The agency must follow the procedures
3 it would follow in imposing an administrative penalty against the
4 facility under the other law.

5 (d) A facility may contest and appeal the imposition of an
6 administrative penalty under Subsection (c) by following the same
7 procedures the facility would follow in contesting or appealing an
8 administrative penalty imposed against the facility by the agency
9 under the other law.

10 Sec. 322.055. MEDICAID WAIVER PROGRAM. A Medicaid waiver
11 program provider, when providing supervised living or residential
12 support, shall comply with this chapter and rules adopted under
13 this chapter.

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

16 Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing
17 services to a resident of an institution shall comply with Chapter
18 322 and the rules adopted under that chapter.

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

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

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

26 Sec. 252.0085. RESTRAINT AND SECLUSION. A person providing
27 services to a resident of a facility licensed by the department

1 under this chapter or operated by the department and exempt under
2 Section 252.003 from the licensing requirements of this chapter
3 shall comply with Chapter 322 and the rules adopted under that
4 chapter.

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

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

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

12 Sec. 571.0067. RESTRAINT AND SECLUSION. A person providing
13 services to a patient of a mental hospital or mental health facility
14 shall comply with Chapter 322 and the rules adopted under that
15 chapter.

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

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

24 SECTION 8. (a) In this section:

25 (1) "Emergency" means a situation in which attempted
26 preventive de-escalatory or redirection techniques have not
27 effectively reduced the potential for injury and it is immediately

1 necessary to intervene to prevent:

2 (A) imminent probable death or substantial
3 bodily harm to the person because the person overtly or continually
4 threatens or attempts to commit suicide or threatens or attempts to
5 commit serious bodily harm; or

6 (B) imminent physical harm to another because the
7 person overtly or continually makes or commits threats, attempts,
8 or other acts.

9 (2) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 (3) "Facility" means:

12 (A) a facility as defined by Section 322.001,
13 Health and Safety Code, as added by this Act;

14 (B) a facility under the jurisdiction of the
15 Texas Youth Commission; or

16 (C) a public or private juvenile detention or
17 correctional facility regulated by the Texas Juvenile Probation
18 Commission under Chapter 141, Human Resources Code.

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

23 (b) The executive commissioner shall establish a work group
24 to recommend best practices in policy, training, safety, and risk
25 management for the Texas Youth Commission, the Texas Juvenile
26 Probation Commission, or a health and human services agency to
27 adopt to govern the management of facility residents' behavior.

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

4 (1) a representative of the Department of State Health
5 Services;

6 (2) a representative of the Department of Aging and
7 Disability Services;

8 (3) a representative of the Department of Family and
9 Protective Services;

10 (4) a representative of the Texas Youth Commission;

11 (5) a representative of the Texas Education Agency;

12 (6) a representative of the Texas Juvenile Probation
13 Commission;

14 (7) a representative of this state's protection and
15 advocacy system established as required by 42 U.S.C. Section 15043
16 who is appointed by the administrative head of that system; and

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

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

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

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

27 (i) physical, behavioral, and

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

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

6 (B) complies with federal reporting
7 requirements;

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

12 (D) documents the death or serious injury of an
13 employee during a physical intervention, seclusion, or restraint;

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

16 (3) de-escalation techniques and minimum standards to
17 manage the behavior of facility residents in an emergency
18 situation;

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

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

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

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

3 (1) focus on the physical, behavioral, and
4 de-escalation interventions used by facility employees to manage
5 the behavior of facility residents in an emergency; and

6 (2) support uniformity in definitions, reporting, and
7 training used by the Texas Youth Commission, the Texas Juvenile
8 Probation Commission, and health and human services agencies.

9 (f) The executive commissioner shall:

10 (1) not later than November 1, 2005, establish the
11 work group under Subsection (b) of this section;

12 (2) not later than June 1, 2006, adopt rules necessary
13 to implement Chapter 322, Health and Safety Code, as added by this
14 Act;

15 (3) not later than July 1, 2006, file with the
16 appropriate committees of the senate and the house of
17 representatives a report that describes the work group's
18 recommended best practices;

19 (4) not later than November 1, 2006, adopt rules
20 necessary to implement the best practices recommended by the work
21 group; and

22 (5) not later than January 1, 2007, file with the
23 appropriate committees of the senate and the house of
24 representatives for consideration by the 80th Legislature a report
25 that describes the actions taken by the Texas Youth Commission, the
26 Texas Juvenile Probation Commission, and health and human services
27 agencies to implement the best practices recommended by the work

1 group.

2 SECTION 9. This Act takes effect September 1, 2005.