

By: Zaffirini

S.B. No. 325

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 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;

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

4 (G) a facility under the jurisdiction of the
5 Texas Youth Commission; or

6 (H) a public or private juvenile detention or
7 correctional facility regulated by the Texas Juvenile Probation
8 Commission under Chapter 141, Human Resources Code.

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

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

14 [Sections 322.002-322.050 reserved for expansion]

15 SUBCHAPTER B. RESTRAINTS AND SECLUSION

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

18 (1) obstructs the resident's airway, including a
19 procedure that places anything in, on, or over the resident's mouth
20 or nose;

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

23 (3) interferes with the resident's ability to
24 communicate.

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

27 (1) limits the hold to no longer than the period

1 specified by rules adopted under Section 322.052;

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

4 (3) uses the hold only when an observer, who is trained
5 to identify the risks associated with positional, compression, or
6 restraint asphyxiation and with prone and supine holds and who is
7 not involved in the restraint, is ensuring the resident's breathing
8 is not impaired.

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

14 (1) define acceptable restraint holds that minimize
15 the risk of harm to a facility resident in accordance with this
16 subchapter;

17 (2) govern the use of seclusion of facility residents;
18 and

19 (3) develop practices to decrease the frequency of the
20 use of restraint and seclusion.

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

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

27 Sec. 322.053. NOTIFICATION. The executive commissioner of

1 the Health and Human Services Commission by rule shall ensure that
2 each resident at a facility regulated by a health and human services
3 agency or another state agency and the resident's legally
4 authorized representative are notified of the rules and policies
5 related to restraints and seclusion.

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

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

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

18 (b) A health and human services agency or another state
19 agency that registers or otherwise licenses or certifies a facility
20 may:

21 (1) revoke, suspend, or refuse to renew the license,
22 registration, or certification of a facility that violates
23 Subsection (a); or

24 (2) place on probation a facility that violates
25 Subsection (a).

26 (c) A health and human services agency or another state
27 agency that regulates a facility and that is authorized to impose an

1 administrative penalty against the facility under other law may
2 impose an administrative penalty against the facility for violating
3 Subsection (a). Each day a violation continues or occurs is a
4 separate violation for purposes of imposing a penalty. The amount
5 of the penalty may not exceed the maximum amount that the agency may
6 impose against the facility under the other law. The agency must
7 follow the procedures it would follow in imposing an administrative
8 penalty against the facility under the other law.

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

14 Sec. 322.055. MEDICAID WAIVER PROGRAM. A contractor that
15 provides supervised living under a Medicaid waiver program for a
16 facility shall comply with this chapter and rules adopted under
17 this chapter in the same manner as a facility.

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 department and exempt under
6 Section 252.003 from the licensing requirements of this chapter
7 shall comply with Chapter 322 and the rules adopted under that
8 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 client at a treatment facility shall comply with
13 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.

1 SECTION 8. Subchapter E, Chapter 61, Human Resources Code,
2 is amended by adding Section 61.0763 to read as follows:

3 Sec. 61.0763. RESTRAINT AND SECLUSION. A person providing
4 treatment or services to a child under the commission's control
5 shall comply with Chapter 322, Health and Safety Code, and the rules
6 adopted under that chapter.

7 SECTION 9. Subchapter C, Chapter 141, Human Resources Code,
8 is amended by adding Section 141.0435 to read as follows:

9 Sec. 141.0435. RESTRAINT AND SECLUSION. A person subject
10 to this chapter providing probation and juvenile detention services
11 to a child shall comply with Chapter 322, Health and Safety Code,
12 and the rules adopted under that chapter.

13 SECTION 10. (a) In this section:

14 (1) "Emergency" means a situation in which attempted
15 preventive de-escalatory or redirection techniques have not
16 effectively reduced the potential for injury and it is immediately
17 necessary to intervene to prevent:

18 (A) imminent probable death or substantial
19 bodily harm to the person because the person overtly or continually
20 threatens or attempts to commit suicide or threatens or attempts to
21 commit serious bodily harm; or

22 (B) imminent physical harm to another because the
23 person overtly or continually makes or commits threats, attempts,
24 or other acts.

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

27 (3) "Facility" has the meaning assigned by Section

1 322.001, Health and Safety Code, as added by this Act.

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

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

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

14 (1) a representative of the Department of State Health
15 Services;

16 (2) a representative of the Department of Aging and
17 Disability Services;

18 (3) a representative of the Department of Family and
19 Protective Services;

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

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

22 (6) a representative of the Texas Juvenile Probation
23 Commission;

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

27 (8) additional members who are recognized experts or

1 who represent the interests of facility residents, including
2 advocates, family members, physicians, representatives of
3 hospitals licensed under Chapter 241 or 577, Health and Safety
4 Code, social workers, and psychiatric nurses.

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

6 (1) the development of a comprehensive reporting
7 system that:

8 (A) collects and analyzes data related to the use
9 of:

10 (i) physical, behavioral, and
11 de-escalation interventions by employees of a facility to manage
12 the behavior of facility residents in an emergency; and

13 (ii) medication administered by employees
14 to a facility resident without the resident's consent in an
15 emergency;

16 (B) complies with federal reporting
17 requirements;

18 (C) documents the death or serious injury of a
19 facility resident related to physical intervention, seclusion, or
20 restraint, including the administration of medication, by an
21 employee; and

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

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

26 (3) de-escalation techniques and minimum standards to
27 manage the behavior of facility residents in an emergency

1 situation;

2 (4) best practices for physical, behavioral, and
3 de-escalation interventions by employees that include specific
4 holds and techniques for the physical restraint of facility
5 residents;

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

9 (6) best practices related to seclusion of facility
10 residents.

11 (e) In recommending the best practices, the work group
12 shall:

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

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

19 (f) The executive commissioner shall:

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

22 (2) not later than March 1, 2006, adopt rules
23 necessary to implement Chapter 322, Health and Safety Code, as
24 added by this Act;

25 (3) not later than July 1, 2006, file with the
26 appropriate committees of the senate and the house of
27 representatives a report that describes the work group's

1 recommended best practices;

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

5 (5) not later than January 1, 2007, file with the
6 appropriate committees of the senate and the house of
7 representatives for consideration by the 80th Legislature a report
8 that describes the actions taken by the Texas Youth Commission, the
9 Texas Juvenile Probation Commission, and health and human services
10 agencies to implement the best practices recommended by the work
11 group.

12 SECTION 11. This Act takes effect September 1, 2005.