

1-1 By: Zaffirini S.B. No. 325  
1-2 (In the Senate - Filed February 2, 2005; February 7, 2005,  
1-3 read first time and referred to Committee on Health and Human  
1-4 Services; April 14, 2005, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 April 14, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 325 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; providing an administrative penalty.

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 Department of Aging and Disability Services under Chapter 252 or  
1-26 operated by that department and exempt under Section 252.003 from  
1-27 the licensing requirements of that chapter;

1-28 (C) a mental hospital or mental health facility,  
1-29 as defined by Section 571.003;

1-30 (D) an institution, as defined by Section  
1-31 242.002;

1-32 (E) an assisted living facility, as defined by  
1-33 Section 247.002; or

1-34 (F) a treatment facility, as defined by Section  
1-35 464.001.

1-36 (2) "Health and human services agency" means an agency  
1-37 listed in Section 531.001, Government Code.

1-38 (3) "Seclusion" means the involuntary separation of a  
1-39 resident from other residents and the placement of the resident  
1-40 alone in an area from which the resident is prevented from leaving.

1-41 [Sections 322.002-322.050 reserved for expansion]

1-42 SUBCHAPTER B. RESTRAINTS AND SECLUSION

1-43 Sec. 322.051. CERTAIN RESTRAINTS PROHIBITED. (a) A person  
1-44 may not administer to a resident of a facility a restraint that:

1-45 (1) obstructs the resident's airway, including a  
1-46 procedure that places anything in, on, or over the resident's mouth  
1-47 or nose;

1-48 (2) impairs the resident's breathing by putting  
1-49 pressure on the torso; or

1-50 (3) interferes with the resident's ability to  
1-51 communicate.

1-52 (b) A person may use a prone or supine hold on the resident  
1-53 of a facility only if the person:

1-54 (1) limits the hold to no longer than the period  
1-55 specified by rules adopted under Section 322.052;

1-56 (2) uses the hold only as a last resort when other less  
1-57 restrictive interventions have proven to be ineffective; and

1-58 (3) uses the hold only when an observer, who is trained  
1-59 to identify the risks associated with positional, compression, or  
1-60 restraint asphyxiation and with prone and supine holds and who is  
1-61 not involved in the restraint, is ensuring the resident's breathing  
1-62 is not impaired.

1-63 (c) Small residential facilities and small residential

2-1 service providers are exempt from Subsection (b)(3).

2-2 Sec. 322.052. ADOPTION OF RESTRAINT AND SECLUSION  
 2-3 PROCEDURES. (a) For each health and human services agency that  
 2-4 regulates the care or treatment of a resident at a facility, the  
 2-5 executive commissioner of the Health and Human Services Commission  
 2-6 shall adopt rules to:

2-7 (1) define acceptable restraint holds that minimize  
 2-8 the risk of harm to a facility resident in accordance with this  
 2-9 subchapter;

2-10 (2) govern the use of seclusion of facility residents;  
 2-11 and

2-12 (3) develop practices to decrease the frequency of the  
 2-13 use of restraint and seclusion.

2-14 (b) The rules must permit prone and supine holds only as  
 2-15 transitional holds for use on a resident of a facility.

2-16 (c) A facility may adopt procedures for the facility's use  
 2-17 of restraint and seclusion on a resident that regulate, more  
 2-18 restrictively than is required by a rule of the regulating health  
 2-19 and human services agency, the use of restraint and seclusion.

2-20 Sec. 322.053. NOTIFICATION. The executive commissioner of  
 2-21 the Health and Human Services Commission by rule shall ensure that  
 2-22 each resident at a facility regulated by a health and human services  
 2-23 agency and the resident's legally authorized representative are  
 2-24 notified of the rules and policies related to restraints and  
 2-25 seclusion.

2-26 Sec. 322.054. RETALIATION PROHIBITED. (a) A facility may  
 2-27 not discharge or otherwise retaliate against:

2-28 (1) an employee, client, resident, or other person  
 2-29 because the employee, client, resident, or other person files a  
 2-30 complaint, presents a grievance, or otherwise provides in good  
 2-31 faith information relating to the misuse of restraint or seclusion  
 2-32 at the facility; or

2-33 (2) a client or resident of the facility because  
 2-34 someone on behalf of the client or resident files a complaint,  
 2-35 presents a grievance, or otherwise provides in good faith  
 2-36 information relating to the misuse of restraint or seclusion at the  
 2-37 facility.

2-38 (b) A health and human services agency that registers or  
 2-39 otherwise licenses or certifies a facility may:

2-40 (1) revoke, suspend, or refuse to renew the license,  
 2-41 registration, or certification of a facility that violates  
 2-42 Subsection (a); or

2-43 (2) place on probation a facility that violates  
 2-44 Subsection (a).

2-45 (c) A health and human services agency that regulates a  
 2-46 facility and that is authorized to impose an administrative penalty  
 2-47 against the facility under other law may impose an administrative  
 2-48 penalty against the facility for violating Subsection (a). Each  
 2-49 day a violation continues or occurs is a separate violation for  
 2-50 purposes of imposing a penalty. The amount of the penalty may not  
 2-51 exceed the maximum amount that the agency may impose against the  
 2-52 facility under the other law. The agency must follow the procedures  
 2-53 it would follow in imposing an administrative penalty against the  
 2-54 facility under the other law.

2-55 (d) A facility may contest and appeal the imposition of an  
 2-56 administrative penalty under Subsection (c) by following the same  
 2-57 procedures the facility would follow in contesting or appealing an  
 2-58 administrative penalty imposed against the facility by the agency  
 2-59 under the other law.

2-60 Sec. 322.055. MEDICAID WAIVER PROGRAM. A Medicaid waiver  
 2-61 program provider, when providing supervised living or residential  
 2-62 support, shall comply with this chapter and rules adopted under  
 2-63 this chapter.

2-64 SECTION 2. Subchapter B, Chapter 242, Health and Safety  
 2-65 Code, is amended by adding Section 242.0373 to read as follows:

2-66 Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing  
 2-67 services to a resident of an institution shall comply with Chapter  
 2-68 322 and the rules adopted under that chapter.

2-69 SECTION 3. Subchapter B, Chapter 247, Health and Safety

3-1 Code, is amended by adding Section 247.0255 to read as follows:  
3-2 Sec. 247.0255. RESTRAINT AND SECLUSION. A person providing  
3-3 services to a resident of an assisted living facility shall comply  
3-4 with Chapter 322 and the rules adopted under that chapter.

3-5 SECTION 4. Subchapter A, Chapter 252, Health and Safety  
3-6 Code, is amended by adding Section 252.0085 to read as follows:

3-7 Sec. 252.0085. RESTRAINT AND SECLUSION. A person providing  
3-8 services to a resident of a facility licensed by the department  
3-9 under this chapter or operated by the department and exempt under  
3-10 Section 252.003 from the licensing requirements of this chapter  
3-11 shall comply with Chapter 322 and the rules adopted under that  
3-12 chapter.

3-13 SECTION 5. Subchapter A, Chapter 464, Health and Safety  
3-14 Code, is amended by adding Section 464.0095 to read as follows:

3-15 Sec. 464.0095. RESTRAINT AND SECLUSION. A person providing  
3-16 services to a client at a treatment facility shall comply with  
3-17 Chapter 322 and the rules adopted under that chapter.

3-18 SECTION 6. Chapter 571, Health and Safety Code, is amended  
3-19 by adding Section 571.0067 to read as follows:

3-20 Sec. 571.0067. RESTRAINT AND SECLUSION. A person providing  
3-21 services to a patient of a mental hospital or mental health facility  
3-22 shall comply with Chapter 322 and the rules adopted under that  
3-23 chapter.

3-24 SECTION 7. Subchapter C, Chapter 42, Human Resources Code,  
3-25 is amended by adding Section 42.0422 to read as follows:

3-26 Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing  
3-27 services to a resident of a child-care institution, including a  
3-28 state-operated facility that is a residential treatment center or a  
3-29 child-care institution serving children with mental retardation,  
3-30 shall comply with Chapter 322, Health and Safety Code, and the rules  
3-31 adopted under that chapter.

3-32 SECTION 8. (a) In this section:

3-33 (1) "Emergency" means a situation in which attempted  
3-34 preventive de-escalatory or redirection techniques have not  
3-35 effectively reduced the potential for injury and it is immediately  
3-36 necessary to intervene to prevent:

3-37 (A) imminent probable death or substantial  
3-38 bodily harm to the person because the person overtly or continually  
3-39 threatens or attempts to commit suicide or threatens or attempts to  
3-40 commit serious bodily harm; or

3-41 (B) imminent physical harm to another because the  
3-42 person overtly or continually makes or commits threats, attempts,  
3-43 or other acts.

3-44 (2) "Executive commissioner" means the executive  
3-45 commissioner of the Health and Human Services Commission.

3-46 (3) "Facility" means:

3-47 (A) a facility as defined by Section 322.001,  
3-48 Health and Safety Code, as added by this Act;

3-49 (B) a facility under the jurisdiction of the  
3-50 Texas Youth Commission; or

3-51 (C) a public or private juvenile detention or  
3-52 correctional facility regulated by the Texas Juvenile Probation  
3-53 Commission under Chapter 141, Human Resources Code.

3-54 (4) "Health and human services agency" means a health  
3-55 and human services agency listed in Section 531.001, Government  
3-56 Code, that regulates the care or treatment of a resident of a  
3-57 facility.

3-58 (b) The executive commissioner shall establish a work group  
3-59 to recommend best practices in policy, training, safety, and risk  
3-60 management for the Texas Youth Commission, the Texas Juvenile  
3-61 Probation Commission, or a health and human services agency to  
3-62 adopt to govern the management of facility residents' behavior.

3-63 (c) The executive commissioner shall determine the number  
3-64 of members to serve on the work group. The executive commissioner  
3-65 shall appoint as members of the work group:

3-66 (1) a representative of the Department of State Health  
3-67 Services;

3-68 (2) a representative of the Department of Aging and  
3-69 Disability Services;

- 4-1 (3) a representative of the Department of Family and  
 4-2 Protective Services;
- 4-3 (4) a representative of the Texas Youth Commission;
- 4-4 (5) a representative of the Texas Education Agency;
- 4-5 (6) a representative of the Texas Juvenile Probation  
 4-6 Commission;
- 4-7 (7) a representative of this state's protection and  
 4-8 advocacy system established as required by 42 U.S.C. Section 15043  
 4-9 who is appointed by the administrative head of that system; and
- 4-10 (8) additional members who are recognized experts or  
 4-11 who represent the interests of facility residents, including  
 4-12 advocates, family members, physicians, representatives of  
 4-13 hospitals licensed under Chapter 241 or 577, Health and Safety  
 4-14 Code, social workers, and psychiatric nurses.
- 4-15 (d) The work group shall study and make recommendations on:
- 4-16 (1) the development of a comprehensive reporting  
 4-17 system that:
- 4-18 (A) collects and analyzes data related to the use  
 4-19 of:
- 4-20 (i) physical, behavioral, and  
 4-21 de-escalation interventions by employees of a facility to manage  
 4-22 the behavior of facility residents in an emergency; and
- 4-23 (ii) medication administered by employees  
 4-24 to a facility resident without the resident's consent in an  
 4-25 emergency;
- 4-26 (B) complies with federal reporting  
 4-27 requirements;
- 4-28 (C) documents the death or serious injury of a  
 4-29 facility resident related to physical intervention, seclusion, or  
 4-30 restraint, including the administration of medication, by an  
 4-31 employee; and
- 4-32 (D) documents the death or serious injury of an  
 4-33 employee during a physical intervention, seclusion, or restraint;
- 4-34 (2) the prevention of the death of or serious injury to  
 4-35 facility residents related to physical intervention or restraint;
- 4-36 (3) de-escalation techniques and minimum standards to  
 4-37 manage the behavior of facility residents in an emergency  
 4-38 situation;
- 4-39 (4) best practices for physical, behavioral, and  
 4-40 de-escalation interventions by employees that include specific  
 4-41 holds and techniques for the physical restraint of facility  
 4-42 residents;
- 4-43 (5) best practices related to specific populations,  
 4-44 including any consideration that should be given to a facility's  
 4-45 community or institutional setting; and
- 4-46 (6) best practices related to seclusion of facility  
 4-47 residents.
- 4-48 (e) In recommending the best practices, the work group  
 4-49 shall:
- 4-50 (1) focus on the physical, behavioral, and  
 4-51 de-escalation interventions used by facility employees to manage  
 4-52 the behavior of facility residents in an emergency; and
- 4-53 (2) support uniformity in definitions, reporting, and  
 4-54 training used by the Texas Youth Commission, the Texas Juvenile  
 4-55 Probation Commission, and health and human services agencies.
- 4-56 (f) The executive commissioner shall:
- 4-57 (1) not later than November 1, 2005, establish the  
 4-58 work group under Subsection (b) of this section;
- 4-59 (2) not later than June 1, 2006, adopt rules necessary  
 4-60 to implement Chapter 322, Health and Safety Code, as added by this  
 4-61 Act;
- 4-62 (3) not later than July 1, 2006, file with the  
 4-63 appropriate committees of the senate and the house of  
 4-64 representatives a report that describes the work group's  
 4-65 recommended best practices;
- 4-66 (4) not later than November 1, 2006, adopt rules  
 4-67 necessary to implement the best practices recommended by the work  
 4-68 group; and
- 4-69 (5) not later than January 1, 2007, file with the

5-1 appropriate committees of the senate and the house of  
5-2 representatives for consideration by the 80th Legislature a report  
5-3 that describes the actions taken by the Texas Youth Commission, the  
5-4 Texas Juvenile Probation Commission, and health and human services  
5-5 agencies to implement the best practices recommended by the work  
5-6 group.

5-7 SECTION 9. This Act takes effect September 1, 2005.

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