

BILL ANALYSIS

S.B. 751
By: Zaffirini
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In December 2008, the United States Department of Justice found fault with the liberal use, type, and purpose of restraints used in Texas's state-run system that serves persons with intellectual disabilities. From January through September 2008, a total of 10,143 restraints were applied to 751 consumers. The use of restraints actually increased in some facilities, despite a similar report released in December 2006, that documented similar issues.

Currently, the Department of Aging and Disability Services (DADS) allows state school staff to include physical restraints in consumer behavior plans. Mechanical restraints are regarded as the most restrictive type of restraints and increasingly are forbidden by a growing number of providers. Yet, in Texas' state school system, mechanical restraints account for a high percentage of all restraints used. Residents have suffered broken bones, black eyes, and even death as a result of poor restraint policies. Moreover, there is a causal relationship between the system's failure to coordinate communication services with behavioral supports and the high use of restraints.

S.B. 751 prohibits the use of certain restraints in state schools. This bill also requires a state school to report to the executive commissioner of the Health and Human Services Commission each incident in which a restraint is administered to a resident of a state school, and requires the commissioner of DADS to submit an annual report summarizing the use of restraints by each state school to the Senate Health and Human Services Committee. The bill requires DADS to implement a training certification program for staff members at state schools relating to restraints; to develop a format for collecting information from persons being admitted to a state school; and to develop various plans.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 592.102, Health and Safety Code) and SECTION 5, of this bill.

ANALYSIS

SECTION 1. Amends Chapter 592, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. USE OF RESTRAINTS IN STATE SCHOOLS

Sec. 592.101. DEFINITION. Defines "executive commissioner."

Sec. 592.102. USE OF RESTRAINTS. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to ensure that a restraint is not administered to a resident of a state school unless the restraint is necessary to prevent imminent physical injury to the resident or another and the least restrictive restraint effective to prevent imminent physical injury; the administration of a restraint to a resident of a state school ends immediately once the imminent risk of physical injury abates; a restraint is not administered to a resident of a state school as punishment; and a restraint is not administered as part of a behavior plan to change behavior but only to provide immediate protection from imminent harm.

(b) Requires the executive commissioner to adopt rules to prohibit the use of prone and supine holds on a resident of a state school except as transitional holds.

Sec. 592.103. PRO RE NATA RESTRAINTS PROHIBITED. (a) Prohibits a person from ordering or administering a mechanical or physical restraint for a resident of a state school on a pro re nata basis.

(b) Prohibits a person from ordering or administering an injection of a psychoactive medication to a resident of a state school on a pro re nata basis.

(c) Authorizes an injection of a psychoactive medication to be administered only under a court order or an order issued by a physician pursuant to a psychiatric emergency.

Sec. 592.104. STRAIGHTJACKETS PROHIBITED. Prohibits a person from using a straightjacket to restrain a resident of a state school.

Sec. 592.105. DUTY TO REPORT. Requires a state school to report to the executive commissioner each incident in which a restraint is administered to a resident of a state school. Requires that the report contain information and be in the form required by rules of the executive commissioner.

Sec. 592.106. CONFLICT WITH OTHER LAW. Provides that to the extent of a conflict between this subchapter and Chapter 322 (Use of Restraint and Seclusion in Certain Health Care Facilities), this subchapter controls.

SECTION 2. Amends Subchapter B, Chapter 161, Human Resources Code, by adding Section 161.0315, as follows:

Sec. 161.0315. ANNUAL REPORT ON USE OF RESTRAINTS. (a) Requires the commissioner of aging and disability services (commissioner) to submit annually to the Senate Health and Human Services Committee a report that summarizes the use of restraints by each state school.

(b) Requires that the report contain a self-evaluation performed by each state school related to the use of restraints and include an analysis of the data that identifies any trends or patterns in use of restraints.

SECTION 3. Amends Subchapter C, Chapter 161, Human Resources Code, by adding Section 161.058, as follows:

Sec. 161.058. RESTRAINT TRAINING AND CERTIFICATION. (a) Requires the Department of Aging and Disability Services (DADS) to implement a training and certification program for staff members of a state school who may administer restraints in the performance of official duties.

(b) Requires DADS to ensure that training related to reducing the use of restraints is competency based and provides for routine quality assurance reviews.

(c) Requires that the training and certification program implemented under this section include instruction concerning certain topics.

SECTION 4. Amends Subchapter D, Chapter 161, Human Resources Code, by adding Sections 161.090, 161.091, 161.092, and 161.093, as follows:

Sec. 161.090. COLLECTION OF TREATMENT HISTORY AT ADMISSION. (a) Requires DADS to develop a format for collecting information at the time a person is admitted to a state school. Requires DADS to collect the information from the person or the person's legally authorized representative.

(b) Requires that the format provide for the collection of information relating to the person's treatment history and any advance directives issued for the person that provides information regarding restraint history and restraint preferences of the person.

Sec. 161.091. RESTRAINT REDUCTION PLAN. (a) Requires DADS to establish a restraint reduction plan that ensures that DADS' policies and procedures incorporate a vision, values, and a philosophy that the use of restraints should be reduced.

(b) Requires DADS to, with stakeholder input, develop a performance improvement plan and make further recommendations for implementation of the restraint reduction plan.

(c) Requires DADS to develop debriefing procedures for staff and residents of a state school to be performed after each use of a restraint. Requires DADS to use the information obtained in a debriefing to determine which restraint practices are workable and which practices should be avoided. Requires DADS, in making a determination, to consider the potential traumatic effect a restraint has on a staff member, a resident, or a witness and determine what course of action may have mitigated any traumatic effect.

(d) Requires DADS to collect data from each state school that relates to the use of restraints by facility, by shift, and by staff member, to identify trends and patterns in the use of restraints by a state school and to set goals to implement the restraint reduction plan at a state school.

(e) Provides that a state school is required to incorporate the restraint reduction plan and emphasize the importance of the plan in the hiring, orientation, training, continuing education, and performance evaluation of staff members of the state school; is required to train and educate staff members about the use of nonphysical intervention options to avoid the use of restraints, and the rights of residents regarding the use of restraints; and is authorized to seek and implement innovative clinical approaches to employ at the admission of a person and during the treatment of a person that further the philosophy of the restraint reduction plan.

Sec. 161.092. POSITIVE BEHAVIOR SUPPORT PLAN. Requires DADS to develop a positive behavior support plan for residents of a state school. Requires that the plan describe a protocol for reducing the frequency and duration of behaviors that require restraints for immediate protection from imminent harm by substituting positive behaviors.

Sec. 161.093. DISEASE MANAGEMENT PROGRAM. (a) Requires DADS to develop a disease management program for residents of a state school who have a dual diagnosis of mental retardation and mental illness.

(b) Requires that the program established under this section employ disease management practices to ensure that persons with a dual diagnosis of mental retardation and mental illness receive treatment services for the mental illness that are appropriate to a diagnosis of that illness and are consistent with clinical approaches to the treatment of that illness by other agencies and private providers of treatment services.

SECTION 5. Requires the executive commissioner, not later than January 1, 2010, to adopt rules required under Section 592.102 and 592.105, Health and Safety Code, as added by this Act; by rule define the "restraint" in a manner consistent with the definition of that term provided by 42 U.S.C. Section 290ii(d)(1); and adopt rules necessary to regulate the use of protective and supportive devices, including those used in medical and dental procedures.

SECTION 6. Requires the commissioner, not later than January 1, 2010, to implement a restraint training and certification program required by Section 161.058, Human Resources

Code, as added by this Act; develop the format for collecting information at the admission of a person to a state school required by Section 161.090, Human Resources Code, as added by this Act; develop the restraint reduction plan required under Section 161.091, Human Resources Code, as added by this Act; develop the positive behavior support plan required by Section 161.092, Human Resources Code, as added by this Act; and develop the disease management program required by Section 161.093, Human Resources Code, as added by this Act.

SECTION 7. Requires the commissioner, not later than September 1, 2010, to submit to the Senate Health and Human Services Committee the first annual report on the use of restraints required by Section 161.0315, Human Resources Code, as added by this Act.

SECTION 8. Effective date: upon passage or September 1, 2009.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2009.