

BILL ANALYSIS

S.B. 41
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The United States Department of Justice recently investigated and reported on the liberal use of restraints and the types of restraints used in Texas' state-run facilities for persons with intellectual disabilities. Despite earlier documentation of deficiencies in the use of restraints, the use of such devices has reportedly increased in some facilities. Mechanical restraints, which account for a significant percentage of the restraints used in certain health care facilities in Texas, are regarded as the most restrictive type of restraint and have been increasingly forbidden by a growing number of providers. Reports indicate that clients of state supported living centers have suffered broken bones, black eyes, and even death as a result of poor restraint policies.

S.B. 41 seeks to codify the United States Department of Justice recommendations that all facilities stop using prone holds and straitjackets, eliminate as-needed orders or standing orders for the use of restraints, limit the use of mechanical restraints to emergencies only, use only the least restrictive restraint techniques when the use of restraints is necessary, and provide for administrative review after the use of a restraint.

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 SECTIONS 1 and 2 of this bill.

ANALYSIS

S.B. 41 amends the Health and Safety Code to require the executive commissioner of the Health and Human Services Commission to adopt rules to ensure that a mechanical or physical restraint is not administered to a resident of a state supported living center unless the restraint is necessary to prevent imminent physical injury to the resident or another and is the least restrictive restraint effective to prevent imminent physical injury, that the administration of a mechanical or physical restraint to a resident of a state supported living center ends immediately once the imminent risk of physical injury abates, and that a mechanical or physical restraint is not administered to a resident of a state supported living center as punishment or as part of a behavior plan. The bill requires the executive commissioner to adopt rules to prohibit the use of prone and supine holds on a resident of a state supported living center except as transitional holds.

S.B. 41 prohibits a person from issuing a standing order to administer on an as-needed basis mechanical or physical restraints to a resident of a state supported living center and prohibits a person from administering mechanical or physical restraints to a resident of a state supported living center pursuant to such an order. The bill prohibits a person from using a straitjacket to restrain a resident of a state supported living center.

S.B. 41 requires a state supported living center to report to the executive commissioner each incident in which a physical or mechanical restraint is administered to a resident of a state supported living center. The bill requires the report to contain information and to be in the form required by rules of the executive commissioner.

S.B. 41 establishes that, to the extent of any conflict between the bill's provisions and provisions of law relating to the use of restraint and seclusion in certain health care facilities, the bill's provisions control. The bill requires the executive commissioner, not later than January 1, 2012, to adopt rules as required by the bill.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.