

SUBJECT: Regulating restraint and seclusion in health and human services institutions

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Uresti, Naishtat, McCall, Reyna, Wohlgemuth
1 nay — Miller
3 absent — Christian, Olivo, Villarreal

SENATE VOTE: On final passage, April 16 — voice vote

WITNESSES: For — Aaryce Hayes, Advocacy, Inc.
Against — None

BACKGROUND: The use of restraint and seclusion in public health institutions is governed by various federal regulations and state rules. Federal regulations include those imposed by the Centers for Medicare and Medicaid Services on medical and mental hospitals, as well as the Children’s Health Act of 2000, which will better define terms of restraint and seclusion and require training and reporting when the rules related to the act are in place. Each health and human services state agency in Texas has rules regarding restraint and seclusion, but they vary in specificity and content from agency to agency.

DIGEST: SB 59 would establish regulations about the use of restraint and seclusion in child care institutions, intermediate care facilities for the mentally retarded, mental hospitals, nursing homes, assisted living facilities, chemical dependency treatment facilities, or supervised living services provided by contractors under the Medicaid waiver program.

Each health and human services agency that regulates an institution would be required to adopt rules defining acceptable holds and use of seclusion. The bill would prohibit the use of a restraint that obstructed the patient’s airway, impaired breathing, or interfered with the ability to communicate. Holding a patient down only could be done as a last resort and as a transitional hold. Institutions would be required to adopt procedures that limited the use of

restraint or seclusion at least as much as the agency rules. Agencies also would be required to notify each resident or their guardian of the rules. The new rules would be required by November 1, 2004.

The bill would require the commissioner of Health and Human Services to establish a work group by November 1, 2003, to develop and recommend best practices for institutions that managed residents' behavior. Membership of the work group would include representatives from relevant HHS agencies and other stakeholders. The group would focus on:

- behavioral management techniques and administration of medication in an emergency, without a resident's consent;
- collection of data regarding death or serious injury of a resident or employee during a physical intervention; and
- best practices for de-escalation techniques, physical intervention, and seclusion.

By November 1, 2004, the commissioner of HHS would report to the Legislature the best practices and recommendations of the work group, and agencies would have to adopt rules implementing the recommended best practices. The commissioner would report the progress of implementation of the best practices to the Legislature by January 1, 2005.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

SB 59 would protect patients in state facilities by establishing minimum guidelines for all state institutions. There is significant anecdotal evidence that restraints are used inappropriately in facilities, which has led to injuries or even death. The state should establish a clear set of guidelines for use of potentially dangerous techniques.

The bill would ensure that appropriate techniques were used and inappropriate ones prohibited. Given the diversity of clients that health and human services agencies and institutions care for, it is reasonable to expect some need for emergency intervention, but use of certain techniques should be prohibited, minimized, or carefully monitored to ensure patient safety. While a patient might need to be physically restrained, obstructing a patient's airway is never acceptable.

The Senate Interim Committee on Health and Human Services studied the use of restraint and seclusion in institutions and recommended a series of changes that would protect patients' lives. Most of the recommendations have been implemented by agency rule. The bill includes the remaining recommendations that require statutory change.

Under current agency rules, some institutions have more thorough protections than others. MHMR implemented rules to reduce emergency intervention in 1996 and has collected data about the use of restraint and seclusion. Since then, it has reduced the frequency of emergency interventions, which has resulted in reduced injury to patients and staff.

The bill would implement the Children's Health Act in a meaningful way. Texas should embrace the spirit of the act: that regulations about restraint and seclusion should be uniform across agencies and that they should be thorough and descriptive to ensure that they set minimum standards. The state would be required to gather additional data and adopt the definitions in the act, but this should translate the intent into a comprehensive set of guidelines across all health and human services agencies.

Texas should not implement criminal penalties in cases involving restraint or seclusion. The state already has civil penalties, and SB 59 likely would strengthen the civil remedy process by prohibiting certain techniques. If those techniques were used, it would be a clear violation under the new statute proposed by SB 59. Current law leaves much more to interpretation, which can make it difficult for families to obtain civil remedies.

This bill would preserve existing criminal liability for health care providers. Under current law, the use restraint or seclusion constitutes assault, or a more serious offense, if it intentionally, knowingly, or recklessly caused bodily injury to another.

The bill is unlikely to cost the state any additional funds. Even though the fiscal note estimates a \$13,000 cost, HHSC has projected that it could absorb the function within existing resources.

**OPPONENTS
SAY:**

SB 59 would not go far enough in protecting patients because it would not implement criminal penalties. Civil remedies are not enough when the use of

restraints or seclusion result in the death or serious injury of a patient. Health care providers should be held criminally responsible for the outcomes of inappropriate restraint or seclusion.

**OTHER
OPPONENTS
SAY:**

The state should not create a new workgroup at a cost of \$13,000 when the budget for other human services is being cut. SB 59 contains important provisions that could be implemented without the workgroup.

NOTES:

The fiscal note attached to SB 59 estimates a cost to the state of \$13,000 in fiscal 2004 to pay for increased administrative duties at HHSC.

The author intends to offer an amendment to remove the provisions relating to the establishment of a workgroup.