

BILL ANALYSIS

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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Injuries and deaths following a personal restraint have gained media attention throughout the country. Deaths involving the use of emergency interventions, particularly a personal or mechanical restraint, have occurred on airplanes, in schools, and in residential facilities. Although the use of behavioral interventions are sometimes necessary and appropriate to protect an individual or someone else, considering the possible unintended consequences to staff as well as residents, it is appropriate for the state to make an effort to better understand the context in which these interventions are used, and to assist providers in using less restrictive alternatives whenever possible.

While state agencies all indicate an investment in the reduction of the use of restraints and seclusions, few have systems by which to collect and analyze data on the frequency of the usage. The development of a data collection system that can be used across agencies and over time requires a common language, common data collection techniques, and uniform minimum standards. The purpose of this legislation is to begin the dialogue that could lead to that type of a system being developed.

As proposed, S.B. 325 seeks to develop best practice standards to govern the use of verbal, behavioral, and physical interventions used in controlling the behaviors of residents of certain health and human service agencies. The bill prohibits certain restraint practices that have been found to increase the likelihood of death or injury, prohibits retaliation against individuals who report a complaint in good faith relating to the misuse of restraint or seclusion at the facility, and establishes sanctions against a facility for violations of the prohibitions. The bill also establishes a workgroup facilitated by the Health and Human Services Commission for health and human service agencies that provide residential services, the Texas Education Agency, the Texas Youth Commission, and the Texas Juvenile Probation Commission, to make recommendations related to uniform definitions, data collection, and minimum standards on the use of behavioral interventions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 322.052 and 322.053, Health and Safety Code) and SECTION 10 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle G, Title 4, Health and Safety Code, by adding Chapter 322, as follows:

CHAPTER 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN HEALTHCARE FACILITIES

Sec. 322.001. DEFINITIONS. Defines "facility," "health and human services agency," and "seclusion."

[Reserves Sections 322.002-322.050 for expansion.]

SUBCHAPTER B. RESTRAINTS AND SECLUSION

Sec. 322.051. CERTAIN RESTRAINTS PROHIBITED. (a) Prohibits an individual from administering certain types of restraints to a resident of a facility.

(b) Authorizes an individual to use a prone or supine hold on the resident of a facility only under certain circumstances.

Sec. 322.052. ADOPTION OF RESTRAINT AND SECLUSION PROCEDURES. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules for each health and human services agency or other state agency that regulates the care or treatment of a resident at a facility. Sets forth certain requirements for the rules.

(b) Requires the rules to permit prone and supine holds only as transitional holds for use on a resident of a facility.

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

Sec. 322.053. NOTIFICATION. Requires the executive commissioner, by rule, to ensure that each resident at a facility regulated by a health and human services agency or another state agency and the resident's legally authorized representative are notified of the rules and policies related to restraints and seclusion.

Sec. 322.054. RETALIATION PROHIBITED, (a) Prohibits a facility from discharging or otherwise retaliating against certain individuals because those individuals file a complaint, present a grievance, or otherwise provide in good faith information relating to the misuse of restraint or seclusion at the facility.

(b) Authorizes a health and human services agency or another state agency that registers or otherwise licenses or certifies a facility to take certain actions against a facility that violates Subsection (a).

(c) Authorizes a health and human services agency or another state agency that regulates a facility and that is authorized to impose an administrative penalty against the facility under other law to impose an administrative penalty against the facility for violating Subsection (a). Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Prohibits the amount of the penalty from exceeding the maximum amount that the agency may impose against the facility under the other law. Requires the agency to follow the procedures it would follow in imposing an administrative penalty against the facility under the other law.

(d) Authorizes a facility to contest and appeal the imposition of an administrative penalty under Subsection (c) by following the same procedures the facility would follow in contesting or appealing an administrative penalty imposed against the facility by the agency under the other law.

Sec. 322.055. MEDICAID WAIVER PROGRAM. Requires a contractor that provides supervised living under a Medicaid waiver program for a facility to comply with this chapter and rules adopted under this chapter in the same manner as a facility.

SECTION 2. Amends Subchapter B, Chapter 242, Health and Safety Code, by adding Section 242.0373, as follows:

Sec. 242.0373. RESTRAINT AND SECLUSION. Requires an individual providing services to a resident of an institution to comply with Chapter 322 and rules adopted under that chapter.

SECTION 3. Amends Subchapter B, Chapter 247, Health and Safety Code, by adding Section 247.0255, as follows:

Sec. 247.0255. RESTRAINT AND SECLUSION. Requires an individual providing services to a resident of an assisted living facility to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 4. Amends Subchapter A, Chapter 252, Health and Safety Code, by adding Section 252.0085, as follows:

[While the statutory reference in this bill is to the Texas Department of Human Services, the following amendments affect the Department of Aging and Disability Services, as the successor agency to the Texas Department of Human Services.]

Sec. 252.0085. RESTRAINT AND SECLUSION. Requires an individual providing services to a resident of a facility licensed by the department under this chapter or operated by the department and exempt under Section 252.003 (Exemptions) from the licensing requirements of this chapter to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 5. Amends Subchapter A, Chapter 464, Health and Safety Code, by adding Section 464.0095, as follows:

Sec. 464.0095. RESTRAINT AND SECLUSION. Requires an individual providing services to a client at a treatment facility to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 6. Amends Chapter 571, Health and Safety Code, by adding Section 571.0067, as follows:

Sec. 571.0067. RESTRAINT AND SECLUSION. Requires an individual providing services to a patient of a mental hospital or mental health facility to comply with Chapter 322 and the rules adopted under that chapter.

SECTION 7. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0422, as follows:

Sec. 42.0422. RESTRAINT AND SECLUSION. Requires an individual providing services to a resident of a child-care institution, including a state-operated facility, that is a residential treatment center or a child-care institution serving children with mental retardation, to comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

SECTION 8. Amends Subchapter E, Chapter 61, Human Resources Code, by adding Section 61.0763, as follows:

Sec. 61.0763. RESTRAINT AND SECLUSION. Requires an individual providing treatment or services to a child under the Texas Youth Commission's control to comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

SECTION 9. Amends Subchapter C, Chapter 141, Human Resources Code, by adding Section 141.0435, as follows:

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

SECTION 10. (a) Defines "emergency," "executive commissioner," "facility," and "health and human services agency."

(b) Requires the executive commissioner to establish a work group to make certain best practice recommendations for the Texas Youth Commission, the Texas Juvenile Probation Commission, or a health and human services agency to adopt to govern the management of the facility residents' behavior.

(c) Requires the executive commissioner to determine the number of members to serve on the work group and to appoint individuals representing specific agencies as members of the work group.

(d) Requires the work group to study and make recommendations on certain topics pertaining to intervention and de-escalation.

(e) Requires the work group to focus on certain interventions and to support uniformity in definitions, reporting, and training used by the Texas Youth Commission, the Texas Juvenile Probation Commission, and health and human services agencies when making recommendations.

(f) Requires the executive commissioner to, not later than November 1, 2005, establish the work group established under Subsection (b) of this section; not later than March 1, 2006, adopt rules necessary to implement Chapter 322, Health and Safety Code, as added by this Act; not later than July 1, 2006, file with the appropriate committees of the senate and the house of representatives a report that describes the work group's recommended best practices; not later than November 1, 2006, adopt rules necessary to implement the best practices recommended by the work group; and not later than January 1, 2007, file with the appropriate committees of the senate and the house of representatives for consideration by the 80th Legislature a report that describes the actions taken by the Texas Youth Commission, the Texas Juvenile Probation Commission, and health and human services agencies to implement the best practices recommended by the work group.

SECTION 11. Effective date: September 1, 2005.