

HEALTH & SAFETY CODE
CHAPTER 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN HEALTH CARE
FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 322.001. DEFINITIONS. In this chapter:

- (1) "Facility" means:
- (A) a child-care institution, as defined by Section 42.002, Human Resources Code, including a state-operated facility, that is a residential treatment center or a child-care institution serving children with mental retardation;
 - (B) an intermediate care facility licensed by the Department of Aging and Disability Services under Chapter 252 or operated by that department and exempt under Section 252.003 from the licensing requirements of that chapter;
 - (C) a mental hospital or mental health facility, as defined by Section 571.003;
 - (D) an institution, as defined by Section 242.002;
 - (E) an assisted living facility, as defined by Section 247.002; or
 - (F) a treatment facility, as defined by Section 464.001.
- (2) "Health and human services agency" means an agency listed in Section 531.001, Government Code.

(3) "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving. Added by Acts 2005, 79th Leg., ch. 698, Sec. 1, eff. Sept. 1, 2005.

SUBCHAPTER B. RESTRAINTS AND SECLUSION

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

- (1) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;
- (2) impairs the resident's breathing by putting pressure on the torso; or
- (3) interferes with the resident's ability to communicate.

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

- (1) limits the hold to no longer than the period specified by rules adopted under Section 322.052;
- (2) uses the hold only as a last resort when other less restrictive interventions have proven to be ineffective; and
- (3) uses the hold only when an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds and who is not involved in the restraint, is ensuring the resident's breathing is not impaired.

(c) Small residential facilities and small residential service providers are exempt from Subsection (b)(3). Added by Acts 2005, 79th Leg., ch. 698, Sec. 1, eff. Sept. 1, 2005.

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

- (1) define acceptable restraint holds that minimize the risk of harm to a facility resident in accordance with this subchapter;
- (2) govern the use of seclusion of facility residents; and
- (3) develop practices to decrease the frequency of the use of restraint and seclusion.

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

(c) A facility may 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. Added by Acts 2005, 79th Leg., ch. 698, Sec. 1, eff. Sept. 1, 2005.

Sec. 322.053. NOTIFICATION. The executive commissioner of the Health and Human Services Commission by rule shall ensure that each resident at a facility regulated by a health and human services agency and the resident's legally authorized representative are

notified of the rules and policies related to restraints and seclusion.

Added by Acts 2005, 79th Leg., ch. 698, Sec. 1, eff. Sept. 1, 2005.

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

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

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

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

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

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

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

(d) A facility may 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.

Added by Acts 2005, 79th Leg., ch. 698, Sec. 1, eff. Sept. 1, 2005.

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

Added by Acts 2005, 79th Leg., ch. 698, Sec. 1, eff. Sept. 1, 2005.

Sec. 322.001. DEFINITIONS. In this chapter:

(1) "Community-wide plan" means an agreement entered into between one or more health care facilities, entities administering a sexual assault program, district attorney's offices, or law enforcement agencies that designates one or more health care facilities in the community as a primary health care facility to furnish emergency medical services and evidence collection to sexual assault survivors on a community or area-wide basis.

(2) "Department" means the Department of State Health Services.

(3) "Health care facility" means a general or special hospital licensed under Chapter 241 or a general or special hospital owned by this state.

(4) "Sexual assault" means any act as described by Section 22.011 or 22.021, Penal Code.

(5) "Sexual assault survivor" means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.

Added by Acts 2005, 79th Leg., ch. 934, Sec. 1, eff. Sept. 1, 2005.

Sec. 322.002. PLAN FOR EMERGENCY SERVICES. (a) At the request of the department, a health care facility shall submit to the department for approval a plan for providing the services required by Section 322.004 to sexual assault survivors who arrive for treatment at the emergency department of the health care facility.

(b) The department shall adopt procedures for submission, approval, and modification of a plan required under this section.

(c) A health care facility shall submit the plan required by this section not later than the 60th day after the date the department requests the plan.

(d) The department shall approve or reject the plan not

later than the 120th day after the date the plan is submitted.
Added by Acts 2005, 79th Leg., ch. 934, Sec. 1, eff. Sept. 1, 2005.

Sec. 322.003. REJECTION OF PLAN. (a) If a plan required under Section 322.002 is not approved, the department shall:

- (1) return the plan to the health care facility; and
- (2) identify the specific provisions under Section 322.004 with which the plan conflicts or does not comply.

(b) Not later than the 90th day after the date the department returns a plan to a health care facility under Subsection (a), the facility shall correct and resubmit the plan to the department for approval.

Added by Acts 2005, 79th Leg., ch. 934, Sec. 1, eff. Sept. 1, 2005.

Sec. 322.004. MINIMUM STANDARDS FOR EMERGENCY SERVICES. (a) After a sexual assault survivor arrives at a health care facility following an alleged sexual assault, the facility shall:

- (1) provide care to the survivor in accordance with Subsection (b); or
- (2) stabilize and transfer the survivor to a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors, which shall provide care to the survivor in accordance with Subsection (b).

(b) A health care facility providing care to a sexual assault survivor shall provide the survivor with:

- (1) a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been approved by a law enforcement agency;

- (2) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

- (3) access to a sexual assault program advocate, if available, as provided by Article 56.045, Code of Criminal Procedure;

- (4) the information form required by Section 322.005;

- (5) a private treatment room, if available;

- (6) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; and

- (7) the name and telephone number of the nearest sexual assault crisis center.

(c) A health care facility must obtain documented consent before providing the forensic medical examination and treatment.

Added by Acts 2005, 79th Leg., ch. 934, Sec. 1, eff. Sept. 1, 2005.

Sec. 322.005. INFORMATION FORM. (a) The department shall develop a standard information form for sexual assault survivors that must include:

- (1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

- (2) information regarding treatment of sexually transmitted infections and pregnancy, including:

- (A) generally accepted medical procedures;

- (B) appropriate medications; and

- (C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

- (3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

- (4) information regarding crime victims compensation, including:

- (A) a statement that a law enforcement agency will pay for the forensic portion of the examination; and

- (B) reimbursement information for the medical portion of the examination;

- (5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

- (6) the name and telephone number of sexual assault crisis centers statewide; and

- (7) information regarding postexposure prophylaxis for HIV infection.

(b) A health care facility shall use the standard form developed under this section.

(c) An individual employed by or under contract with a health care facility may refuse to provide the information form required by this section for ethical or religious reasons. If an individual employed by or under contract with a health care facility refuses to provide the survivor with the information form, the health care facility must ensure that the information form is provided without delay to the survivor by another individual employed by or under contract with the facility.

Added by Acts 2005, 79th Leg., ch. 934, Sec. 1, eff. Sept. 1, 2005.

Sec. 322.006. INSPECTION. The department may conduct an inspection of a health care facility to ensure compliance with this chapter.

Added by Acts 2005, 79th Leg., ch. 934, Sec. 1, eff. Sept. 1, 2005.