

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

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE G. PROVISION OF SERVICES IN CERTAIN FACILITIES

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. September 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. September 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. September 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. September 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. September 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. September 1, 2005.