

SUBJECT: Standard for use of restraints in state schools

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Rose, Herrero, Darby, Elkins, Hernandez, Legler, Naishtat, Walle

0 nays

1 absent — Hughes

SENATE VOTE: On final passage, April 30 — 31-0

WITNESSES: For — Aaryce Hayes; Marcus Keyes; (*Registered, but did not testify:* Dawn Choate, The Arc of Texas; Kathryn Lewis, Advocacy, Incorporated)

Against — None

On — Colleen Horton, Texas Center for Disability Studies

BACKGROUND: Health and Safety Code, ch. 592 provides for the rights of individuals with mental retardation, including protection from exploitation and abuse, the right to the least restrictive living environment possible, freedom from unnecessary medication, and the prohibition of unusual or hazardous treatments.

Federal law, 42 U.S.C. sec. 290ii(d)(1), defines "restraint" as:

- any physical restraint that is a mechanical or personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely, not including devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or any other methods that involve the physical holding of a resident for the purpose of conducting routine physical examinations or tests or to protect the resident from falling out of bed or to permit the resident to participate in activities without the risk of physical harm to the resident (such term does not include a

- physical escort); and
- a drug or medication that is used as a restraint to control behavior or restrict a resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition.

The Department of Aging and Disability Services (DADS) operates state schools and centers with ICF-MR components providing 24-hour care to eligible Texans with cognitive and developmental disabilities. These state mental retardation facilities (SMRFs) include 11 state schools (Abilene, Austin, Brenham, Corpus Christi, Denton, Lubbock, Lufkin, Mexia, Richmond, San Angelo and San Antonio) and two state centers (El Paso and Rio Grande). In 2008, almost 5,000 Texans diagnosed with mental retardation resided in state schools and centers.

Reports of abuse and neglect in the state school system have led to enhanced state and federal scrutiny, including a U.S. Department of Justice (DOJ) investigation beginning in 2005. In December 2008, DOJ released a report of its findings on Texas state schools and centers. The report concluded that many practices within the state school system violated the constitutional and federal statutory rights of residents, including a systemic failure to provide residents with adequate freedom from inappropriate restraint.

DOJ cited as problematic the liberal use, type, and purpose of restraints used in the state school system. In the first nine months of 2008, a total of 10,143 restraints were applied to 751 state school residents, with the most restrictive type of restraints, mechanical restraints, accounting for a high percentage of all restraints used, according to DOJ.

DIGEST:

SB 751 would amend Health and Safety Code, ch. 592, adding subchapter E on the use of restraints in state schools. The bill would require the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules to prohibit the use of prone and supine holds on a state school resident except as transitional holds, and to ensure that:

- a restraint was not administered to a resident unless the restraint was necessary to prevent imminent physical injury to the individual or another, and was the least restrictive restraint to prevent imminent physical injury;
- the administration of a restraint to a resident of a state school ended immediately once the imminent risk of physical injury abated;

- a restraint was not administered to a resident as punishment; and
- a restraint was not administered as part of a behavior plan to change behavior but only to provide immediate protection from imminent harm.

SB 751 would prohibit the order or administration of certain measures on a pro re nata (PRN), or “as needed” basis, including mechanical or physical restraints, and injections of psychoactive medications. Injections of psychoactive medications could be administered only under a court order or by order of a physician due to a psychiatric emergency. The bill would prohibit the use of straightjackets to restrain state school residents.

State schools would have to report to the executive commissioner each incident in which a restraint was administered to a resident. DADS would submit annual reports to the Senate Health and Human Services Committee summarizing the use of restraints by each state school and identifying any trends or patterns in the use of restraints.

Restraint training and certification. Human Resources Code, ch. 161 would be amended, adding sec. 161.058 to require DADS to implement restraint training and certification for state school staff who could administer restraints in the performance of official duties. DADS would ensure that training related to reducing the use of restraints was competency based and provided for routine quality assurance reviews. The training and certification program would have to include instruction on:

- the needs of state school residents;
- typical behaviors of state school residents;
- relationship building between staff members and residents;
- alternatives to the use of restraints;
- methods for managing a situation to eliminate the need for restraints;
- avoiding power struggles between a staff member and a resident;
- the potential for causing negative physiological and psychological consequences by the use of restraints;
- monitoring physical signs of distress and obtaining medical assistance;
- legal issues involved in the use of restraints;
- position asphyxia;

- escape and evasion techniques;
- proper time limits on the duration of application of restraints;
- procedures to address problematic restraints;
- administration of restraints on children;
- debriefings of staff members who administer restraints; and
- investigation of injuries and complaints relating to the use of restraints.

DADS would develop debriefing procedures for state school staff and residents to be performed after each use of a restraint. The department would use information obtained in debriefings to determine which restraint practices were workable and which should be avoided.

Restraint reduction plan. Under the bill, the department would establish a restraint reduction plan that ensured that DADS' policies and procedures incorporated a vision, values, and a philosophy that the use of restraints should be reduced. The department would, with stakeholder input, develop a performance improvement plan and would make further recommendations for implementation of the restraint reduction plan. SB 751 would require the collection of data by DADS on the use of restraints by facility, by shift, and by staff member to identify trends and patterns in the use of restraints by a state school and to set goals to implement the restraint reduction plan at a state school.

A state school would incorporate the restraint reduction plan and emphasize the importance of the plan in the hiring, orientation, training, continuing education and performance evaluation of staff members. State schools would train and educate staff members on the rights of residents regarding the use of restraints and the use of nonphysical intervention options to avoid the use of restraints.

DADS would develop a format for collecting information at the time an individual was admitted to a state school from the individual or the individual's legally authorized representative (LAR) relating to the treatment history and advance directives on restraint history and restraint preferences of the individual.

Positive behavior support plan. The department would develop a positive behavior support plan for residents. The plan would describe ways of substituting positive behaviors in an effort to reduce the frequency

and duration of behaviors that would require restraints.

Disease management program. DADS would develop a disease management program for state school residents with a dual diagnosis of mental retardation and mental illness to ensure that the treatment services for the mental illness were appropriate to a diagnosis of that illness and with clinical approaches to the treatment of that illness by other agencies and private providers.

No later than January 1, 2010, the executive commissioner of HHSC would define the term “restraint” in a manner consistent with 42 U.S.C. sec. 290ii(d)(1) and adopt rules as necessary to regulate the use of protective and supportive devices, including those used in medical and dental procedures, and as required by the bill.

No later than January 1, 2010, the commissioner of DADS would:

- implement a restraint training and certification program;
- develop the format for collecting information at the admission of an individual to a state school;
- develop the restraint reduction program;
- develop the positive behavior support plan; and
- develop the disease management program.

No later than September 1, 2010, the commissioner of DADS would submit to the Senate Health and Human Services Committee the first annual report on the use of restraints as required by the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.