

## **BILL ANALYSIS**

Senate Research Center  
77R1481 JJT-D

S.B. 876  
By: Moncrief  
Health & Human Services  
3/20/2001  
As Filed

### **DIGEST AND PURPOSE**

Currently, there are federal standards relating to emergency behavioral interventions in psychiatric and medical facilities and psychiatric residential treatment centers that receive Medicare and Medicaid. As proposed, S.B. 876 sets consistent standards for certain health care facilities in the state in order to provide an equal level of patient protection regardless of the setting, payment source, or characteristics of the populations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to a health and human services agency that regulates the care or treatment of a resident in SECTION 1 (Section 322.003, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

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

#### **CHAPTER 322. USE OF RESTRAINT, SECLUSION, AND EMERGENCY PSYCHOACTIVE MEDICATION IN CERTAIN HEALTH CARE FACILITIES**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 322.001. **DEFINITIONS.** Defines “emergency,” “emergency psychoactive medication,” “facility,” “health and human services agency,” “mechanical restraint,” “personal restraint,” “physical redirection,” “protective device,” “resident,” “restraint,” “seclusion,” and “supportive device.”

Sec. 322.002. **APPLICABILITY.** Provides that this chapter applies to a health and human services agency that regulates the care or treatment of a resident.

Sec. 322.003. **ADOPTION OF PROCEDURES.** Requires a health and human services agency by rule to adopt procedures for the use on a resident of mechanical restraint; personal restraint; seclusion; emergency psychoactive medication; and supportive and protective devices. Requires that the procedures be consistent with this chapter and with the right of a resident to be free from certain abusive behaviors.

Sec. 322.004. **STAFF TRAINING.** Requires a facility to provide to its staff, annually or more frequently if necessary, competency-based training on: procedures for managing a resident’s behavior in an emergency; and the prevention and de-escalation of a resident’s aggressive behavior.

Sec. 322.005. **REPORT OF DEATH OR INJURY DURING OR AFTER RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION.** Requires a facility to report to the appropriate law enforcement or regulatory agencies for investigation a death of or serious injury to a resident if the death or serious injury occurs during the use, or less than 48

hours after the termination of the use, on the resident of restraint, seclusion, or emergency psychoactive medication.

Sec. 322.006. **REPORTS.** Requires a health and human services agency that regulates a facility, each quarter, to collect information related to the facility's use of emergency interventions. Requires certain information to be included. Requires the agency, annually, to submit an analysis of the information collected under this section to the governor and the presiding officer of each house of the legislature.

Sec. 322.007. **CERTAIN RESTRAINTS PROHIBITED.** Prohibits a person from using certain restraints.

Sec. 322.008. **NONEMERGENCY USE OF RESTRAINT OR SECLUSION.** Authorizes restraint to be used on a resident during medical, dental, or postsurgical care, and seclusion to be used during medical care, if its use is necessary and is a regular and customary part of the care.

Sec. 322.009. **USE OF EMERGENCY PSYCHOACTIVE MEDICATION IN CONJUNCTION WITH USE OF RESTRAINT OR SECLUSION.** Authorizes emergency psychoactive medication to be administered to a resident at the time restraint or seclusion is used on the resident only if clinically justified. Requires facility staff to document the specific behaviors that make the conjunctive use of the different intervention methods necessary. Sets forth requirements for the use of emergency psychoactive medication on a resident while restraint or seclusion is used on the resident.

Sec. 322.010. **LIMITATION ON USE OF SECLUSION.** Prohibits seclusion from being used for a resident receiving care or treatment in certain facilities.

Sec. 322.011. **USE OF SUPPORTIVE OR PROTECTIVE DEVICE.** Prohibits a supportive or protective device from being used as a substitute for habilitative or rehabilitative care of a resident. Sets forth reasons for which a protective device may be used on a resident. Sets forth prohibitions regarding the use of a protective device. Authorizes the use of a supportive device to provide postural support for a resident to assist the resident in obtaining or maintaining a normal bodily function. Requires facility staff to periodically review the use of a supportive or protective device on a resident and, where practicable, develop a plan to overcome the need for the device.

[Reserves Sections 322.012-322.020 for expansion.]

#### **SUBCHAPTER B. USE OF RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION IN CERTAIN FACILITIES FOR CHILDREN**

Sec. 322.021. **APPLICABILITY.** Provides that this subchapter applies only to a child-care institution, as defined by Section 42.002 (Definitions), Human Resources Code, that is licensed by the Department of Protective and Regulatory Services as a residential treatment center or an institution serving children with mental retardation.

Sec. 322.022. **RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION AS RESPONSE TO EMERGENCY.** Authorizes the use, except as provided by Section 322.008, of restraint, seclusion, or emergency psychoactive medication on a resident only in an emergency. Prohibits seclusion from being used on a resident with mental retardation.

Sec. 322.023. **INITIATION OF AND PHYSICIAN'S ORDER FOR USE OF RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION.**

Authorizes the initiation of the use of restraint, seclusion, or emergency psychoactive medication only by a member of a facility's staff who has completed competency-based training in the use of behavioral interventions and de-escalation techniques. Authorizes the procession of the use of a mechanical restraint, seclusion, or emergency psychoactive medication only under a physician's written order. Requires a physician to issue the order not more than one hour after the use of the restraint, seclusion, or medication is initiated. Prohibits a physician from authorizing the use of a mechanical restraint or seclusion by a pro re nata (PRN) order.

Sec. 322.024. CONSIDERATIONS BEFORE ISSUANCE OF ORDER. Requires a physician, in determining whether to order or continue the use of a mechanical restraint, seclusion, or emergency psychoactive medication, to consider medical and psychiatric contraindications, including a resident's history regarding physical or sexual abuse or substance abuse.

Sec. 322.025. DOCUMENTATION SUPPORTING USE. Requires a facility that uses restraint, seclusion, or emergency psychoactive medication to document certain information. Requires the member of the staff who initiates the use of restraint, seclusion, or emergency psychoactive medication to sign the document.

Sec. 322.026. CONSULTATION REGARDING ALTERNATIVE TREATMENT STRATEGIES. Requires staff members who are treating a resident, if any combination of restraint, seclusion, or emergency psychoactive medication is used on the resident three or more times in a 30-day period, to consult with a clinician who is not treating the resident to explore alternative treatment strategies.

Sec. 322.027. LIMITATION ON USE OF MECHANICAL RESTRAINT. Authorizes mechanical restraint to be used only on a resident receiving care or treatment in a facility that: serves persons with mental retardation exclusively; or is a residential treatment facility licensed by the Department of Protective and Regulatory Services.

Sec. 322.028. PHYSICIAN'S ORDER FOR USE OF MECHANICAL RESTRAINT. Requires a physician's order for the use of a mechanical restraint to specify: the maximum duration of the use of the restraint; the date and time of its use; and specific behaviors for release.

Sec. 322.029. DURATION OF USE OF MECHANICAL RESTRAINT. Requires the use of a mechanical restraint on a resident to end at the earliest possible time. Except as provided by this section, prohibits a mechanical restraint from being used on a resident for longer than:

- (1) 30 minutes for a resident younger than nine years of age;
- (2) one hour for a resident at least nine years of age but younger than 18 years of age;
- or
- (3) two hours for a resident 18 years of age or older.

Prohibits the use of a mechanical restraint from proceeding beyond the time provided by the original order unless its use is authorized by a physician after the physician conducts an in-person evaluation. Prohibits a mechanical restraint from being used continuously under the original order and one or more continuations of the order for longer than a total of 12 hours.

Sec. 322.030. MONITORING RESIDENT UNDER MECHANICAL RESTRAINT. Requires facility staff, while a mechanical restraint is used on a resident, to: observe the resident continuously; provide the resident with the opportunity to drink water and use a toilet every two hours and more frequently if needed; and monitor the resident's circulation, skin color, respiration, and range of motion.

Sec. 322.031. USE OF PERSONAL RESTRAINT. Requires the use of personal restraint on a resident to end at the earliest possible time. Requires facility staff to continuously observe a resident under personal restraint and monitor the resident's breathing.

Sec. 322.032. SAFE AND OBSERVABLE AREA FOR SECLUSION. Requires an area used for seclusion to: be free of hazards that may cause physical injury to a resident; and permit the direct observation of a resident in the area.

Sec. 322.033. DURATION OF SECLUSION. Requires the seclusion of a resident to end at the earliest possible time.

Sec. 322.034. OPPORTUNITY FOR WATER AND TOILET. Requires facility staff to provide a resident under seclusion with the opportunity to drink water and use a toilet every two hours and more frequently if needed.

[Reserves Sections 322.035-322.080 for expansion.]

#### SUBCHAPTER C. USE OF RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION IN INTERMEDIATE CARE FACILITY

Sec. 322.081. APPLICABILITY. Provides that this subchapter applies only to an intermediate care facility licensed by the Texas Department of Human Services under Chapter 252 or operated by the Texas Department of Human Services or the Texas Department of Mental Health and Mental Retardation and exempt under Section 252.003 from the licensing requirements of that chapter.

Sec. 322.082. DEFINITION. Defines "exclusionary time-out."

Sec. 322.083. SECLUSION PROHIBITED. Prohibits seclusion from being used on a resident of an intermediate care facility.

Sec. 322.084. USE OF EXCLUSIONARY TIME-OUT. Authorizes an exclusionary time-out to be used only in accordance with applicable federal law and for a period not to exceed one hour. Prohibits a person from placing a resident alone in a locked room as part of an exclusionary time-out.

Sec. 322.085. INITIATION OF AND PHYSICIAN'S ORDER FOR USE OF RESTRAINT, TIME-OUT, OR EMERGENCY PSYCHOACTIVE MEDICATION. Authorizes the initiation of restraint, exclusionary time-out, or emergency psychoactive medication only by a member of a facility's staff who has completed competency-based training in the use of behavioral interventions and de-escalation techniques. Authorizes the procession of the use of restraint or emergency psychoactive medication only under a physician's order. Authorizes the procession of the use of exclusionary time-out only under a physician's order or as specified in the resident's behavior plan. Requires a physician to issue the order not more than one hour after the use of the restraint, exclusionary time-out, or emergency psychoactive medication is initiated. Prohibits a physician from authorizing the use of restraint or emergency psychoactive medication by a pro re nata (PRN) order.

Sec. 322.086. CONSIDERATIONS BEFORE ISSUANCE OF ORDER. Makes conforming changes.

Sec. 322.087. DOCUMENTATION SUPPORTING USE. Provides the documentation requirement under this section does not apply when the use of exclusionary time-out is as provided in the resident's behavior plan. Makes conforming changes.

Sec. 322.088. CONSULTATION REGARDING ALTERNATIVE TREATMENT STRATEGIES. Makes conforming changes.

Sec. 322.089. PHYSICIAN'S ORDER FOR USE OF MECHANICAL RESTRAINT. Makes a conforming change.

Sec. 322.090. DURATION OF USE OF MECHANICAL RESTRAINT. Prohibits, except as provided by this section, a mechanical restraint from being used on a resident for longer than:

- (1) 30 minutes for a resident younger than nine years of age;
- (2) one hour for a resident who is:
  - (A) at least 9 years of age but younger than 18 years of age; or
  - (B) 65 years of age or older; or
- (3) two hours for a resident 18 years of age or older but younger than 65 years of age.

Makes conforming changes.

Sec. 322.091. MONITORING RESIDENT UNDER MECHANICAL RESTRAINT. Makes conforming changes.

Sec. 322.092. USE OF PERSONAL RESTRAINT. Makes conforming changes.

[Reserves Sections 322.093-322.130 for expansion.]

SUBCHAPTER D. USE OF RESTRAINT, SECLUSION, OR EMERGENCY  
PSYCHOACTIVE MEDICATION IN MENTAL HOSPITAL OR  
MENTAL HEALTH FACILITY

Sec. 322.131. APPLICABILITY. Provides that this subchapter applies only to a mental hospital or mental health facility, as defined by Section 571.003.

Sec. 322.132. RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION AS RESPONSE TO EMERGENCY. Authorizes the use on a resident of restraint, seclusion, or emergency psychoactive medication only in an emergency, except as provided by Section 322.008.

Sec. 322.133. INITIATION OF AND PHYSICIAN'S ORDER FOR USE OF RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION. Sets forth conforming guidelines for the use of restraint, seclusion, or emergency psychoactive medication.

Sec. 322.134. CONSIDERATIONS BEFORE ISSUANCE OF ORDER. Makes conforming changes.

Sec. 322.135. DOCUMENTATION SUPPORTING USE. Makes conforming changes.

Sec. 322.136. CONSULTATION REGARDING ALTERNATIVE TREATMENT STRATEGIES. Makes conforming changes.

Sec. 322.137. PHYSICIAN'S ORDER FOR USE OF MECHANICAL RESTRAINT. Requires a physician's order for the use of a mechanical restraint to specify: the maximum duration of the use of the restraint; the date and time of its use; and specific behaviors for release.

Sec. 322.138. DURATION OF USE OF MECHANICAL RESTRAINT. Makes conforming changes.

Sec. 322.139. MONITORING OF RESIDENT UNDER MECHANICAL RESTRAINT. Makes conforming changes.

Sec. 322.140. USE OF PERSONAL RESTRAINT. Makes conforming changes.

Sec. 322.141. SAFE AND OBSERVABLE AREA FOR SECLUSION. Makes conforming changes.

Sec. 322.142. DURATION OF SECLUSION. Makes conforming changes.

Sec. 322.143. OPPORTUNITY FOR WATER AND TOILET. Makes conforming changes.

[Reserves Sections 322.144-322.180 for expansion.]

#### SUBCHAPTER E. USE OF RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION IN NURSING FACILITY

Sec. 322.181. APPLICABILITY. Provides that this subchapter applies only to a nursing facility, as defined by Section 242.301.

Sec. 322.182. SECLUSION PROHIBITED. Prohibits seclusion from being used on a resident of a nursing facility.

Sec. 322.183. RESTRAINT OR EMERGENCY PSYCHOACTIVE MEDICATION AS RESPONSE TO EMERGENCY. Authorizes the use on a resident of restraint or emergency psychoactive medication only in an emergency, except as provided by Section 322.008.

Sec. 322.184. INITIATION OF AND PHYSICIAN'S ORDER FOR USE OF RESTRAINT OR EMERGENCY PSYCHOACTIVE MEDICATION. Makes conforming changes.

Sec. 322.185. CONSIDERATIONS BEFORE ISSUANCE OF ORDER. Makes conforming changes.

Sec. 322.186. DOCUMENTATION SUPPORTING USE. Makes conforming changes.

Sec. 322.187. CONSULTATION REGARDING ALTERNATIVE TREATMENT STRATEGIES. Makes conforming changes.

Sec. 322.188. PHYSICIAN'S ORDER FOR USE OF MECHANICAL RESTRAINT. Makes conforming changes.

Sec. 322.189. DURATION OF USE OF MECHANICAL RESTRAINT. Makes conforming changes.

Sec. 322.190. MONITORING RESIDENT UNDER MECHANICAL RESTRAINT. Makes conforming changes.

Sec. 322.191. USE OF PERSONAL RESTRAINT. Makes conforming changes.

[Reserves Sections 322.192-322.220 for expansion.]

SUBCHAPTER F. USE OF RESTRAINT, SECLUSION, OR EMERGENCY  
PSYCHOACTIVE MEDICATION IN ASSISTED LIVING FACILITY

Sec. 322.221. **APPLICABILITY.** Provides that this subchapter applies only to an assisted living facility, as defined by Section 247.002.

Sec. 322.222. **USE OF MECHANICAL RESTRAINT, PSYCHOACTIVE MEDICATION, OR SECLUSION PROHIBITED.** Prohibits a mechanical restraint, emergency psychoactive medication, or seclusion from being used on a resident receiving care or treatment in an assisted living facility.

Sec. 322.223. **USE OF PERSONAL RESTRAINT.** Makes conforming changes.

**SECTION 2.** Requires a health and human services agency described by Section 322.002, Health and Safety Code, as added by this Act, to adopt rules as necessary to implement Chapter 322, Health and Safety Code, as added by this Act, not later than January 1, 2002.

**SECTION 3.** Effective date: September 1, 2001, except that SECTION 1 takes effect January 1, 2002.