



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 23, 2008
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 5876 – Stop Child Abuse in Residential Programs for Teens Act

(Rep. Miller (D) CA and 18 cosponsors)

The Administration strongly supports the overall goal of H.R. 5876, which is to protect children from child abuse and neglect in private facilities. However, the Administration is concerned that H.R. 5876, as reported by the Committee on Education and Labor, would drastically expand the oversight role and enforcement authority of the Federal Government in dealing with private residential programs for teens and potentially conflict and interfere with State enforcement procedures. For the reasons that follow, the Administration strongly opposes House passage of H.R. 5876.

The Administration strongly objects to the expanded role for the Department of Health and Human Services (HHS) under H.R. 5876 and opposes the authorization of spending outside of the President's FY 2009 budget. Under current law, HHS provides funds to States to improve systems that identify and address child abuse and neglect and requires States that receive funding to establish licensing standards for residential programs. Youth who are not in foster care and placed in private institutions that receive no funds from HHS are outside the purview of the Federal Government. In addition, the Federal Government has no oversight over child abuse and neglect investigations. Each State currently has its own process for defining abuse and neglect, investigating allegations of such offenses, and enforcing the law against abuse and neglect. H.R. 5876 would involve the Federal Government in these investigation and enforcement systems by requiring Federal investigations of individual child fatalities as well as Federal-State joint investigations of child abuse and neglect at covered programs. The Administration objects to the expansion of the Federal Government into this traditionally State-regulated area because Federal involvement would likely interfere and conflict with State procedures.

This expansion is also problematic in that it could create a disincentive for States to take on additional responsibilities as would be required by the bill. For example, H.R. 5876 conditions a State's eligibility for Child Abuse Prevention and Treatment Act (CAPTA) funding on its implementation of certain licensing standards and enforcement procedures with respect to the residential programs. However, the bill also expands and then continues the Federal Government's enforcement role over these same residential programs. This expanded role of the Federal Government could have the unintended consequence of lessening both the need and the incentive for States to assume the additional costs and responsibility of implementing these new standards and procedures that would be required for CAPTA funding.

The Administration also is concerned with the definition of the facilities that are subject to Federal investigation under this bill. H.R. 5876 would include as "covered programs" all of those that have "an effect on interstate commerce." The ambiguous description of the bill's

scope would pose an unnecessarily heavy burden on HHS and could result in the legislation covering programs, such as residential special education programs, that the Congress did not intend to cover.

Furthermore, the Administration notes that the bill is inconsistent in its definition of “protection and advocacy” systems, which sometimes refers only to such systems for individuals with developmental disabilities while at other times referencing other types of protection and advocacy systems as well. For example, in referencing “the appropriate protection and advocacy system,” the bill appears to include protection and advocacy systems for individuals with other disabilities or with mental illness, but the narrow definition of protection and advocacy system does not include such other systems. The Administration is concerned that this inconsistency could lead to confusion and incomplete coverage of residential programs.

Finally, the Administration is strongly opposed to a provision of H.R. 5876 that would allow a Federal private right of action and the award of attorneys’ fees. The Administration believes that this provision is unnecessary and could open the door to a new wave of litigation and lawsuit abuse.

* * * * *