



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

*Submitted for the
record by Mr. McKeon.*

May 9, 2008

The Honorable George Miller
Chairman, Committee on Education and Labor
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We take this opportunity to inform you of the views of the Department of Health and Human Services on H.R. 5876, the "Stop Child Abuse in Residential Programs for Teens Act of 2008". While we strongly support the overall goal of the bill, which is to protect children from child abuse and neglect in private facilities, we oppose H.R. 5876 as introduced.

The bill establishes the Administration for Children and Families (ACF), within the Department of Health and Human Services, as the Federal agency with oversight and enforcement authority over private residential boot camps, wilderness camps and other behavioral modification facilities that treat youth and are not currently subject to regulation. ACF would be required to regulate minimum health and safety standards, largely defined in the bill, conduct on-site inspections of all such facilities to determine their compliance with the minimum standards, conduct independent investigations into allegations of abuse and neglect, and evaluate whether States are also responding to allegations of abuse and neglect. Although H.R. 5876 envisions States assuming some licensing, monitoring and enforcement responsibilities within several years of enactment of the bill, ACF's oversight and enforcement roles would continue.

We strongly object to this expanded role for ACF. While ACF currently provides general funds to States to improve systems that identify and address child abuse and neglect and requires States that receive Federal foster care funds to have licensing standards for foster homes and institutions, youth who are not in foster care and placed in private institutions that receive no funds from ACF are outside of our purview. The bill requires investigations of individual child fatalities as well as joint investigations of child abuse and neglect at covered programs. The Federal government has no oversight or rules governing child abuse and neglect investigations, as each State has its own process for defining and investigating child abuse

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and neglect, including the timelines and methods for responding to and completing investigations of allegations. As such, any Federal investigations of abuse and neglect would likely interfere and perhaps conflict with a State's procedures for the same. We also have concerns that ACF and the State could reach different conclusions about whether abuse and neglect occurred in a covered facility or the standards were violated.

We are concerned with the definition of the facilities that are subject to this bill. H.R. 5876 identifies the "covered programs" as those that have "an effect on interstate commerce". The ambiguous description of the bill's scope will undoubtedly pose a heavy and maybe impossible burden on ACF to identify all of the affected covered programs and leave significant loopholes that facilities can use to escape regulation. Additionally, the ambiguity may result in the legislation covering programs, such as residential special education programs, that the Congress did not intend to cover.

We also note that the definition of "protection and advocacy system" refers only to such systems for individuals with developmental disabilities while some provisions of the legislation seem to reference 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. However, inconsistent with these provisions, the narrow definition of protection and advocacy system does not include such other systems.

The bill ties Child Abuse Prevention and Treatment Act (CAPTA) basic State grant funding to implementation of State-specific licensing standards and enforcement procedures. Such States would receive additional funding subject to appropriations (\$200 million authorized) to assist in carrying out these new responsibilities. However, because ACF's oversight and enforcement roles would continue over States and individual facilities, we do not believe there is any incentive for States also to take on these responsibilities. Additionally, CAPTA basic State grant funding is \$26.5 million, and with lean State budgets it is possible that States would reject the basic State grant funds rather than comply with the new requirements.

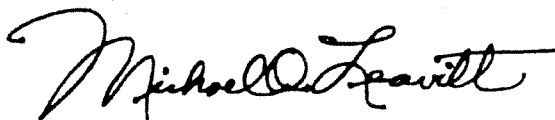
We object to the bill on fiscal grounds as well. H.R. 5876 would authorize spending that is outside of the President's FY 2009 budget request. We also do not believe that the \$50 million authorized would support the conduct of site-inspections on approximately half of the covered programs each year in addition

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to carrying out the bill's requirements for ACF to develop and staff a national hotline for abuse and neglect reports and to develop a website and database that provide detailed information on all facilities.

For these reasons, we oppose H.R. 5876. The Office of Management and Budget has advised that there is no objection to the transmission of this letter from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in cursive script that reads "Michael O. Leavitt". The signature is written in black ink and is positioned above the printed name.

Michael O. Leavitt