



Legislative Bulletin.....June 24, 2008

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H.R. 5876— Stop Child Abuse in Residential Programs for Teens Act of 2008
Amendments to **H.R. 5876**

**H.R. 5876— Stop Child Abuse in Residential Programs for Teens Act of 2008
(Miller, D-CA)**

Please note the conservative concerns below.

Order of Business: H.R. 5876 is scheduled to be considered on Tuesday, June 24, subject to a structured rule, [H. Res. 1276](#). The rule waives all points of order against consideration of the bill (except those for PAYGO and earmarks), provides for one hour of general debate, and makes in order two amendments debatable for 20 minutes and 10 minutes. The rule provides for one motion to recommit on the bill, with or without instructions, and allows the Chair to postpone consideration at any time.

Summaries of the amendments made in order under the rule are contained in this legislative bulletin.

Background on Abuse at Residential Programs

According to the Republican staff at the House Committee on Education and Labor:

Over the last several years, the Government Accountability Office (GAO) has been investigating reports of physical and emotional abuse, neglect, deceptive marketing practices, and a number of fatalities at residential programs offering treatment to troubled youth. According to GAO:

“Overall, residential facilities play an important role in serving youth who cannot be safely served in their communities while living at home, due to risk of running away or harm to themselves or others. However, recent federal reviews highlighted youth fatalities in residential facilities due to neglect or maltreatment, and ongoing federal investigations continue to document incidents of abuse and neglect in some facilities for youth that in some cases have been severe enough to result in hospitalization or death. ... Weaknesses in the current federal-state regulatory structure have failed to safeguard the civil rights and well-being of some of the nation’s most vulnerable youth ... In addition, we remain concerned

about the gaps in reported data that have persisted over a decade since the reporting requirement has been in place.”

Summary:

The intention of this legislation is to protect youth who are enrolled in public and private residential treatment programs from abuse, neglect, and the loss of life. According to the bill, residential treatment programs include programs offering wilderness therapies to boot camp-like programs, and many others. The programs are intended to serve troubled teens with behavioral or emotional problems. Hospitals licensed by the state, foster family and/or group homes, or psychiatric residential treatment facilities are not considered treatment programs under the bill and would not receive funding for child abuse prevention.

H.R. 5876 would require that the Assistant Secretary for Children and Families of the Department of Health and Human Services require that each location of a treatment program, in order to provide for the basic health and safety of children at such a program, meet the following minimum standards:

- a) “Child abuse and neglect shall be prohibited;
- b) “Disciplinary techniques or other practices that involve the withholding of essential food, water, clothing, shelter, or medical care necessary to maintain physical health, mental health, and general safety, shall be prohibited;
- c) “The protection and promotion of the right of each child at such a program to be free from physical and mechanical restraints and seclusion (as such terms are defined in section 595 of the Public Health Service Act (42 U.S.C. 290jj)) to the same extent and in the same manner as a non-medical, community-based facility for children and youth is required to protect and promote the right of its residents to be free from such restraints and seclusion under such section 595, including the prohibitions and limitations described in subsection (b)(3) of such section;
- d) “Acts of physical or mental abuse designed to humiliate, degrade, or undermine a child’s self-respect shall be prohibited;
- e) “Each child at such a program shall have reasonable access to a telephone, and be informed of their right to such access, for making and receiving phone calls with as much privacy as possible, and shall have access to the appropriate State or local child abuse reporting hotline number, and the national hotline number referred to in subsection (c)(2);
- f) “Each staff member, including volunteers, at such a program shall be required, as a condition of employment, to become familiar with what constitutes child abuse and neglect, as defined by State law;
- g) “Each staff member, including volunteers, at such a program shall be required, as a condition of employment, to become familiar with the requirements, including with State law relating to mandated reporters, and procedures for reporting child abuse and neglect in the State in which such a program is located;

- h) “Full disclosure, in writing, of staff qualifications and their roles and responsibilities at such program, including medical, emergency response, and mental health training, to parents or legal guardians of children at such a program, including providing information on any staff changes, including changes to any staff member’s qualifications, roles, or responsibilities, not later than 10 days after such changes occur;
- i) “Each staff member at a covered program described in subclause (I) or (II) of section 2(4)(A)(i) shall be required, as a condition of employment, to be familiar with the signs, symptoms, and appropriate responses associated with heatstroke, dehydration, and hypothermia;
- j) “Each staff member, including volunteers, shall be required, as a condition of employment, to submit to a criminal history check, including a name-based search of the National Sex Offender Registry established pursuant to the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248; 42 U.S.C. 16901 et seq.), a search of the State criminal registry or repository in the State in which the covered program is operating, and a Federal Bureau of Investigation fingerprint check. An individual shall be ineligible to serve in a position with any contact with children at a covered program if any such record check reveals a felony conviction for child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery;
- k) “Policies and procedures for the provision of emergency medical care, including policies for staff protocols for implementing emergency responses;
- l) “All promotional and informational materials produced by such a program shall include a hyperlink to or the URL address of the website created by the Assistant Secretary pursuant to subsection (c)(1)(A);
- m) “Policies to require parents or legal guardians of a child attending such a program to notify, in writing, such program of any medication the child is taking; to be notified within 24 hours of any changes to the child’s medical treatment and the reason for such change; and to be notified within 24 hours of any missed dosage of prescribed medication;
- n) “Procedures for notifying parents or legal guardians with children at such a program of any on-site investigation of a report of child abuse and neglect; violation of the health and safety standards described in this paragraph; and violation of State licensing standards developed pursuant to section 114(b)(1) of the Child Abuse Prevention and Treatment Act, as added by section 8 of this Act;
- o) “Other standards the Assistant Secretary determines appropriate to provide for the basic health and safety of children at such a program.”

The bill would require that the Secretary issue regulations and solicit public comment concerning the regulations being implemented. Additionally, the bill would require that the Secretary establish a process for conducting unannounced site inspections of each location. Such inspections must occur

no less than once every two years, and must determine if the program meets appropriate health and safety licensing requirements, monitoring, and enforcement of regulations.

The bill requires the Secretary to implement an on-going review process for investigating and evaluating reports of child abuse and neglect at treatment facilities. In addition, the bill would require the Secretary to create penalties for violations of the standards required under federal law. Such penalties under the bill could include a civil penalty of \$50,000 per violation (with all funds collected going to the U.S. Treasury).

The bill would require that the Secretary establish, maintain, and disseminate information about the treatment center violations on a website—clearly displaying the history of the violations for the public; the treatment facilities current status; any deaths that occurred; any owner or operator violation; and any penalties incurred due to violations. Furthermore, the Secretary would be required to report on “best practices for helping adolescents with mental health disorders, conditions, behavioral challenges, or alcohol or substance abuse.”

The bill requires that the Secretary establishes a hotline to issue complaints, and then a process to ensure that such complaints of child abuse and neglect received by the hotline are promptly reviewed by “persons with expertise” in evaluating such complaints. The Secretary must then notify the state, appropriate law enforcement, and the appropriate protection and advocacy groups. The Secretary would also be responsible for the investigation into any complaint, and must ensure the collaboration and cooperation of the hotline and with other hotlines around the country.

The bill gives the Secretary the authority to refer any violations to the Attorney General (AG) for “appropriate action.” If the Secretary doesn’t refer to the AG, the AG still has the authority to “sua sponte, file a complaint in any court of competent jurisdiction seeking equitable relief or any other relief authorized by this Act for such violation.”

The bill contains a “private right of action” section which would allow any person suffering an injury traceable to a violation of a regulation under the bill to bring suit or claim demanding “relief.” Relief is defined as “a court hearing a claim or suit may order any appropriate equitable remedy and award damages, including punitive damages and reasonable attorneys’ fees for a violation of a regulation.”

H.R. 5876 would also require that the Secretary issue a report to Congress including the following:

- “a description of the number and types of covered programs;
- “a description of types of violations of health and safety standards found by the Assistant Secretary and any penalties assessed;
- “a summary of findings from on-going reviews;
- “a summary of State progress in meeting the requirements of this Act, including the requirements under section 114 of the Child Abuse Prevention and Treatment Act, as added by this Act; and
- “a summary of the Secretary’s oversight activities and findings.”

Under the bill, in order for a state to receive a grant for prevention enforcement or receive Child Abuse Prevention and Treatment Act (CAPTA) funding, the state must:

- Develop policies and procedures to prevent child abuse and neglect at covered programs;
- Develop policies and procedures to monitor and enforce compliance with the licensing requirements developed under the bill including disclosing all information regarding abuse, conducting unannounced site visits, and creating a database to report child abuse; and
- Annually submit to the Secretary a report that includes information about all of their covered programs and monitoring techniques.

Furthermore, the bill requires the Secretary to have full oversight into all state programs and monitoring techniques. The bill requires that they evaluate each state's processes and conduct investigations into any program which the state has found to have compliance concerns. The Secretary will also have the responsibility of conducting random samples of reviews of cases to assess the state's performance "with respect to the appropriateness of response to and investigation of reports of child abuse and neglect." If the Secretary determines that a state is not adequately implementing and monitoring enforcement procedures, the Secretary can require that all covered programs in that state be investigated.

The bill authorizes \$50 million for each fiscal year 2009 – 2013 for standards and enforcement, and \$200 million for each fiscal year 2009 – 2013 for the grant program to states.

Amendments under the rule:

1. ***Miller (D-CA)/McKeon (R-CA). Managers Amendment.*** The amendment makes three changes to the definition of "covered program." It expands the definition to include public residential programs, and it strikes the exclusion of psychiatric residential treatment facilities and the exclusion of foster care group homes. The amendment also strikes the requirement for the Secretary of Health and Human Services to make unannounced site inspections of covered programs at least once every two years, and it strikes Section 5 (private right of action). The amendment requires the Secretary to report to Congress on the activities of the national toll-free hotline, directs the Secretary to conduct a study on the outcomes of residential programs, and amends one of the standards to require a timeline about notifying parents.
2. ***Shea-Porter (D-NH).*** The amendment would require programs to have policies in place for ensuring that any changes to a child's medication are made in consultation with a qualified medical professional and a parent or legal guardian of the child.

Committee Action: The bill was introduced on April 23, 2008 and referred to the House Committee on Education and Labor, which, on May 14, 2008, marked up, amended, and ordered the bill reported to the full House by a vote of 27-16.

Conservative Concerns:

This legislation represents a large expansion of the oversight role of the federal government (through the oversight role of the Department of Health and Human Services). Furthermore, it expands the Department's enforcement authority over all state procedures and monitoring efforts of residential treatment facilities—efforts that are already in effect. Many conservatives may be

concerned that increased federal government oversight into state procedures may cause unnecessary conflict between the federal government and the states.

In addition, the bill would require that in order for a state to receive CAPTA funding, they must implement very specific regulations and licensing standards. CAPTA, first enacted in 1974, was intended to create a focal point in the federal government to identify and address issues of child abuse and neglect, and to support effective methods of prevention and treatment. This money is essential for states, and some may oppose it being tied to increased regulations and standards.

Furthermore, this bill authorizes \$250 million each year for five years to expand the authority of the federal government, and to implement programs which are already being run at the state level.

Some conservatives, including Education and Labor Committee Ranking Member and RSC Member Buck McKeon (R-CA), expressed various concerns about the legislation as it was reported in the House. After raising concerns, negotiations led to the Manager's Amendment, which addressed many of the initial concerns of the Ranking Member and other Republicans. According to a document released by the Education and Labor Committee Minority staff, the following concerns were addressed:

- “H.R. 5876, as introduced, called for parallel regulatory and enforcement systems at the federal and state level, with cumbersome and intrusive federal involvement in private programs that are rightly governed by state child protection laws. Marking a considerable improvement, under the bill that will be considered by the House:
 - The federal government will not undertake biennial site visits of covered facilities, a requirement that would have been costly and impractical.
 - The federal government will not be responsible for investigating and enforcing allegations of abuse at such facilities, unless cases are referred by the states.
- “The original legislation created a new private right of action to sue in federal court, an invitation for trial lawyers to try to capitalize on potential cases of abuse.
 - There is no new right-to-sue created specifically to benefit trial lawyers. Victims of abuse retain their right to seek remedies in the courts, but the focus is on prevention and protection, instead of litigation.
- “H.R. 5876 as originally drafted contained incomplete protections for the young people in these programs, covering only private facilities while ignoring proven cases of abuse and mistreatment at public programs.” The Manager's Amendment makes the following changes:
 - Both public and private facilities are covered under the state-based abuse prevention structure included in the bill, ensuring equal protections for young people being treated in residential facilities.
 - The bill also maintains the same strong background check requirements to ensure that individuals treating vulnerable youth are thoroughly vetted.”

Administration Position: A recent Statement of Administration Policy released by the Administration states:

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.

Cost to Taxpayers: CBO estimates that H.R. 5876 authorizes the appropriation of \$250 million per year for fiscal years 2009 through 2013 for child abuse prevention programs. CBO estimates that implementing the bill would cost \$805 million over the 2009-2013 period, assuming appropriation of the authorized amounts. CBO also estimates that enacting H.R. 5876 would not affect direct spending. Furthermore, the bill would create new civil penalties, which CBO estimates would have an insignificant effect on revenues over the 2009-2018 period.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill increases the role of the federal government by granting the Department of Health and Human Services the authority to regulate and enforce measures at state residential treatment programs to ensure the safety of the youth at such programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax

Benefits/Limited Tariff Benefits?: The Education and Labor Committee, in [House Report 110-669](#), asserts that, "H.R. 5876 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the Rules of the House of Representatives."

Constitutional Authority: The Education and Labor Committee, in [House Report 110-669](#), cites constitutional authority in Article I, section 8, clauses 1, 3 and 18 of the U.S. Constitution (Congress' power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers). **This constitutional authority statement fails to cite a foregoing power of Congress.** House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." *[emphasis added]*

Note: Article VI, Clause 3 of the U.S. Constitution states that, "The Senators and Representatives...and all executive and judicial Officers...shall be bound by Oath or Affirmation, to support this Constitution."

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