



H.R. 5876 – Stop Child Abuse in Residential Programs for Teens Act of 2008

EXECUTIVE SUMMARY

H.R. 5876 is being considered on the floor under a structured rule on June 24, 2008. This legislation was introduced by Representative George Miller (D-CA) on April 23, 2008. The House Committee on Education and Labor ordered the bill to be reported, as amended, by a vote of 27-16 on May 14, 2008.

This bill establishes a Federal framework for the regulation of youth residential programs. H.R. 5876 requires certain residential programs for children with emotional, behavioral, substance abuse or mental health problems to meet minimum standards. This bill authorizes a private right of action in a U.S. district court for harm caused by a violation of the established minimum standards. H.R. 5876 also includes reporting requirements, the establishment of a national hotline and website, and civil penalties for violations of the Act. Hundreds of residential treatment programs for troubled children have been established in the United States. There are reports of child fatalities and cases of child abuse and neglect at residential programs.

In markup, Committee on Education and Labor Republicans offered several amendments which were defeated by the Majority. H.R. 5876 was finally approved in Committee by a vote of 27-16, principally along party lines. The Manager's Amendment expected to be offered attempts to address some of the controversial provisions of the bill, including the private right of action clause.

The Congressional Budget estimates that implementing H.R. 5876 "would cost \$805 million over the 2009-2013 period".

FLOOR SITUATION

H.R. 5876 is being considered on the floor under a structured rule. The rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Education and Labor;
- Waives all points of order against consideration of the bill except for clauses 9 (regarding earmark disclosure) and 10 (regarding PAYGO) of rule XXI;
- Provides that the amendment in the nature of a substitute recommended by the Committee on Education and Labor, now printed in the bill, shall be considered as an original bill for the purpose of amendment and shall be considered as read;
- Waives all points of order against the amendment in the nature of a substitute except for clause 10 (regarding PAYGO) of rule XXI. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure);
- No amendments made in order may be offered only in the order printed in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole;
- Waives all points of order against the amendments printed in the report except for clauses 9 and 10 of rule XXI;
- Provides one motion to recommit with or without instructions; and
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.



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SUMMARY

Minimum Standards: H.R. 5876 directs the Assistant Secretary for Children and Families of the Department of Health and Human Service to require each location of a covered program to meet minimum standards, within 180 days of enactment the Act.

Note: Under this provision, "covered program" refers to residential programs for children with emotional, behavioral, substance abuse or mental health problems.

These minimum standards include:

- The prohibition of child abuse and neglect;
- The prohibition of disciplinary techniques involving the withholding of food, water, clothing, shelter or necessary medical care;
- The protection of children from physical restraints and seclusion;
- The prohibition of abuse designed to humiliate or degrade a child;
- Reasonable access to outside communications;
- Each staff member, including volunteers, is required to become familiar with what constitutes child abuse and neglect according to State law;
- Full disclosure, in writing, of staff qualifications and their roles and responsibilities;
- Each staff member must submit to a criminal history check, including a name-based search of the National Sex Offender Registry;
- Policies and procedures for the provision of emergency medical care; and
- Procedures for notifying parents or legal guardians of any investigation of child abuse and neglect, or violation of health and safety standards.

Review Process: H.R. 5876 directs the Assistant Secretary to implement, within 180 days of enactment, an on-going review process for investigating reports of child abuse and neglect at covered programs. In addition, every two years residential programs must be inspected for compliance with the regulations of this Act.

Civil Penalties: H.R. 5876 requires the Assistant Secretary to create regulations establishing civil penalties for violations of the minimum standards in the Act. Penalties for the owner or operator of a covered program may not exceed \$50,000.

National Telephone Hotline and Website: The bill requires the establishment of a national toll-free telephone hotline to receive complaints of child abuse and neglect at covered programs, and requires the Assistant Secretary to establish a process to ensure that complaints received by the hotline are promptly reviewed by persons with appropriate expertise. H.R. 5876 also requires the establishment of a publicly accessible website that provides information regarding covered program compliance with state child abuse licensing requirements.

Attorney General Enforcement: H.R. 5876 requires the Assistant Secretary to refer any violation of the minimum standards to the Attorney General for appropriate action. The Attorney General is authorized to file such a complaint on his or her own initiative, regardless of whether such a referral has been made.

Private Right of Action: This bill establishes a new Federal private right of action. Any person suffering an injury traceable to a violation of a regulation of this Act may bring suit or a claim demanding relief in court. This provision also authorizes an award of attorneys' fees.



Annual Report: H.R. 5876 requires an annual report to Congress on the activities carried out under this Act, including a summary of review findings and State progress in meeting the requirements of the Act.

Eligibility Requirements for State Grants: This provision amends the Child Abuse Prevention and Treatment Act (P.L. 93-247) to establish additional eligibility requirements for grants to states to prevent child abuse and neglect at residential programs. States are required to develop policies and procedures to prevent child abuse and neglect at covered programs consistent with the standards specified in H.R. 5876. In addition, states must develop policies and procedures to report to the appropriate protection and advocacy system any case of the death of an individual under the supervision of a covered program not later than 48 hours after the State is informed of such death.

H.R. 5876 also amends the Child Abuse Prevention and Treatment Act (P.L. 93-247) to authorize \$200 million per year for fiscal years 2009-2013 for the state grants. Current law authorizes such sums as are necessary for this purpose.

Authorization of Appropriations: H.R. 5876 authorizes the appropriation of \$50 million for each of the fiscal years 2009-2013 for the purposes of the Act, excluding the above sums for the state grants.

BACKGROUND

The Child Abuse Prevention and Treatment Act (P.L. 93-247), or CAPTA, was codified in 1974. CAPTA provides federal funding to states in support of prevention, assessment, investigation, prosecution, and treatment activities related to child abuse and neglect. The law also provides grants to public agencies and nonprofit organizations for demonstration programs and projects.

Since the 1990s, hundreds of residential treatment programs for troubled children have been established by U.S. entities. These programs include, among others, those which provide a wilderness or outdoor experience, as well as boot-camps that simulate military training. It is estimated that thousands of American children are enrolled in such juvenile programs, although an exact number is yet unknown.

There are reports of child fatalities and cases of child abuse and neglect at residential programs. In 2005, the National Child Abuse and Neglect Data System found that 34 states reported 1,503 incidents of youth maltreatment by residential program staff.

[Department of Health and Human Services - National Child Abuse and Neglect Data System](#)

AMENDMENTS MADE IN ORDER

1) Reps. Miller (D-CA)/ McKeon (R-CA) (REVISED) – 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 strikes the requirement for the Secretary of HHS to make unannounced site inspection of covered programs at least once every two years, and it strikes the 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. The \$50 million HHS authorization is reduced to \$15 million and the \$200 million CAPTA authorization is increased to \$235 million. Privacy protections on the databases are increased, and the amendment clarifies that the state level databases are to be non-public, data regarding reports of abuse in the licensing applications are to be confidential, and that the federal public database shall only include substantiated cases of abuse.



LEGISLATIVE DIGEST

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2) Rep. Carol Shea-Porter (D-NH) – Requires that programs have policies in place for ensuring that any changes to a child's medication are made in the consultation with a qualified medical professional and a parent or legal guardian of the child.

ADDITIONAL VIEWS

According to a June 23, 2008 Statement of Administration Policy:

"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... 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."

[Statement of Administration Policy \(6/23/08\)](#)

COST

The Congressional Budget Office (CBO) estimates that implementing H.R. 5876 "would cost \$805 million over the 2009-2013 period, assuming appropriation of the authorized amounts."

[Full CBO Cost Estimate for H.R. 5876](#)

STAFF CONTACT

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