AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–669

STOP CHILD ABUSE IN RESIDENTIAL PROGRAMS FOR TEENS ACT OF 2008

MAY 22, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEORGE MILLER of California, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5876]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 5876) to require certain standards and enforcement provisions to prevent child abuse and neglect in residential programs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Stop Child Abuse in Residential Programs for Teens Act of 2008".

SEC. 2. DEFINITIONS.

In this Act:

(1) ASSISTANT SECRETARY.—The term "Assistant Secretary" means the Assistant Secretary for Children and Families of the Department of Health and Human Services.

(2) CHILD.—The term "child" means an individual who has not attained the age of 18.

(3) CHILD ABUSE AND NEGLECT.—The term "child abuse and neglect" has the meaning given such term in section 111 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106g).

(4) COVERED PROGRAM.—

(A) IN GENERAL.—The term "covered program" means each location of a program not operated by a governmental entity that, with respect to one or more children who are unrelated to the owner or operator of the program—

(i) provides a residential environment, such as—

(I) a program with a wilderness or outdoor experience, expedition, or intervention;

(II) a boot camp experience or other experience designed to simulate characteristics of basic military training or correctional regimes;

(III) a therapeutic boarding school; or

(IV) a behavioral modification program; and

(ii) operates with a focus on serving children with—

(I) emotional, behavioral, or mental health problems or disorders; or

(II) problems with alcohol or substance abuse.

(B) EXCLUSION.—The term "covered program" does not include—

(i) a hospital licensed by the State;

(ii) a foster family home or group home that provides 24-hour substitute care for children placed away from their parents or guardians and for whom the State child welfare services agency has placement and care responsibility and that is licensed and regulated by the State as a foster family home or group home; or

(iii) a psychiatric residential treatment facility that is certified as meeting the requirements specified in regulations promulgated for such facilities under section 1905(h)(1)(A) of the Social Security Act and that provides psychiatric services for which medical assistance is available under a State plan under title XIX of such Act.

(5) PROTECTION AND ADVOCACY SYSTEM.—The term "protection and advocacy system" means a protection and advocacy system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

(6) STATE.—The term "State" has the meaning given such term in section 111 of the Child Abuse Prevention and Treatment Act.

SEC. 3. STANDARDS AND ENFORCEMENT.

(a) MINIMUM STANDARDS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Assistant Secretary for Children and Families of the Department of Health and Human Services shall require each location of a covered program that individually or together with other locations has an effect on interstate commerce, in order to provide for the basic health and safety of children at such a program, to 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—

(i) to notify, in writing, such program of any medication the child is taking;

(ii) to be notified within 24 hours of any changes to the child's medical treatment and the reason for such change; and

(iii) 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—

(i) on-site investigation of a report of child abuse and neglect;

(ii) violation of the health and safety standards described in this paragraph; and

(iii) 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.

(2) REGULATIONS.—

(A) INTERIM REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Assistant Secretary shall promulgate and enforce interim regulations to carry out paragraph (1).

(B) PUBLIC COMMENT.—The Assistant Secretary shall, for a 90-day period beginning on the date of the promulgation of interim regulations under subparagraph (A) of this paragraph, solicit and accept public comment concerning such regulations. Such public comment shall be submitted in written form.

(C) FINAL REGULATIONS.—Not later than 90 days after the conclusion of the 90-day period referred to in subparagraph (B) of this paragraph, the Assistant Secretary shall promulgate and enforce final regulations to carry out paragraph (1).

(b) MONITORING AND ENFORCEMENT.—

(1) INSPECTIONS.—The Assistant Secretary shall establish a process for conducting unannounced site inspections of each location of a covered program to determine compliance with the standards required under subsection (a)(1). Such inspections shall—

(A) begin not later than the date on which the Assistant Secretary promulgates interim regulations under subsection (a)(2)(A); and

(B) be conducted at each location of each covered program not less often than once every two years, until such time as the Assistant Secretary has

determined a State has appropriate health and safety licensing requirements, monitoring, and enforcement of covered programs in such State, as determined in accordance with section 114(c) of the Child Abuse Prevention and Treatment Act, as added by section 8 of this Act.

(2) ON-GOING REVIEW PROCESS.—Not later than 180 days after the date of the enactment of this Act, the Assistant Secretary shall implement an on-going review process for investigating and evaluating reports of child abuse and neglect at covered programs received by the Assistant Secretary from the appropriate State, in accordance with section 114(b)(3) of the Child Abuse Prevention and Treatment Act, as added by section 8 of this Act. Such review process shall—

(A) include an investigation to determine if a violation of the standards required under subsection (a)(1) has occurred;

(B) include an assessment of the State's performance with respect to appropriateness of response to and investigation of reports of child abuse and neglect at covered programs and appropriateness of legal action against responsible parties in such cases;

(C) be completed not later than 60 days after receipt by the Assistant Secretary of such a report;

(D) not interfere with an investigation by the State or a subdivision thereof; and

(E) be implemented in each State in which a covered program operates until such time as each such State has satisfied the requirements under section 114(c) of the Child Abuse Prevention and Treatment Act, as added by section 8 of this Act, as determined by the Assistant Secretary, or two years has elapsed from the date that such review process is implemented, whichever is later.

(3) CIVIL PENALTIES.—Not later than 180 days after the date of the enactment of this Act, the Assistant Secretary shall promulgate regulations establishing civil penalties for violations of the standards required under subsection (a)(1). The regulations establishing such penalties shall incorporate the following:

(A) Any owner or operator of a covered program at which the Assistant Secretary has found a violation of the standards required under subsection (a)(1) may be assessed a civil penalty not to exceed $50,000 per violation.

(B) All penalties collected under this subsection shall be deposited in the appropriate account of the Treasury of the United States.

(c) DISSEMINATION OF INFORMATION.—The Assistant Secretary shall establish, maintain, and disseminate information about the following:

(1) Websites made available to the public that contain, at a minimum, the following:

(A) The name and each location of each covered program, and the name of each owner and operator of each such program, operating in each State, and information regarding—

(i) each such program's history of violations of—

(I) regulations promulgated pursuant to subsection (a); and

(II) section 114(b)(1) of the Child Abuse Prevention and Treatment Act, as added by section 8 of this Act;

(ii) each such program's current status with the State licensing requirements under section 114(b)(1) of the Child Abuse Prevention and Treatment Act, as added by section 8 of this Act;

(iii) any deaths that occurred to a child while under the care of such a program, including any such deaths that occurred in the five year period immediately preceding the date of the enactment of this Act;

(iv) owners or operators of a covered program that was found to be in violation of the standards required under subsection (a)(1), or a violation of the 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, and who subsequently own or operate another covered program; and

(v) any penalties levied under subsection (b)(3), any judgments or orders issued by a court pursuant to section 5, and any other penalties levied by the State, against each such program.

(B) Information on best practices for helping adolescents with mental health disorders, conditions, behavioral challenges, or alcohol or substance abuse, including information to help families access effective resources in their communities.

(2) A national toll-free telephone hotline to receive complaints of child abuse and neglect at covered programs and violations of the standards required under subsection (a)(1).

(d) ACTION.—The Assistant Secretary shall establish a process to—

(1) ensure complaints of child abuse and neglect received by the hotline established pursuant to subsection (c)(2) are promptly reviewed by persons with expertise in evaluating such types of complaints;

(2) immediately notify the State, appropriate local law enforcement, and the appropriate protection and advocacy system of any credible complaint of child abuse and neglect at a covered program received by the hotline;

(3) investigate any such credible complaint not later than 30 days after receiving such complaint to determine if a violation of the standards required under subsection (a)(1) has occurred; and

(4) ensure the collaboration and cooperation of the hotline established pursuant to subsection (c)(2) with other appropriate National, State, and regional hotlines, and, as appropriate and practicable, with other hotlines that might receive calls about child abuse and neglect at covered programs.

SEC. 4. ENFORCEMENT BY THE ATTORNEY GENERAL.

If the Assistant Secretary determines that a violation of subsection (a)(1) of section 3 has not been remedied through the enforcement process described in subsection (b)(3) of such section, the Assistant Secretary shall refer such violation to the Attorney General for appropriate action. Regardless of whether such a referral has been made, the Attorney General may, *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.

SEC. 5. PRIVATE RIGHT OF ACTION.

(a) MAINTENANCE OF ACTION.—Any person suffering an injury-in-fact traceable to a violation of a regulation promulgated pursuant to section 3(a) may bring suit or a claim demanding relief.

(b) RELIEF.—A court hearing a claim or suit under subsection (a) may order any appropriate equitable remedy and award damages, including punitive damages and reasonable attorneys' fees, for a violation of a regulation promulgated pursuant to section 3(a).

(c) LIMITATION.—The provisions of section 7 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e) shall not apply to any action brought under this Act.

SEC. 6. REPORT.

Not later than one year after the date of the enactment of this Act and annually thereafter, the Secretary of Health and Human Services, in coordination with the Attorney General shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, a report on the activities carried out by the Assistant Secretary and the Attorney General under this Act, including—

(1) a description of the number and types of covered programs inspected by the Assistant Secretary pursuant to section 3(b)(1);

(2) a description of types of violations of health and safety standards found by the Assistant Secretary and any penalties assessed;

(3) a summary of findings from on-going reviews conducted by the Assistant Secretary pursuant to section 3(b)(2);

(4) 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 section 8 of this Act; and

(5) a summary of the Secretary's oversight activities and findings conducted pursuant to subsection (d) of such section 114.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Health and Human Services $50,000,000 for each of fiscal years 2009 through 2013 to carry out this Act (excluding the amendment made by section 8 of this Act).

SEC. 8. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR GRANTS TO STATES TO PREVENT CHILD ABUSE AND NEGLECT AT RESIDENTIAL PROGRAMS.

(a) IN GENERAL.—Title I of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) is amended by adding at the end the following new section:

"SEC. 114. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR GRANTS TO STATES TO PREVENT CHILD ABUSE AND NEGLECT AT RESIDENTIAL PROGRAMS.

"(a) DEFINITIONS.—In this section:

"(1) CHILD.—The term 'child' means an individual who has not attained the age of 18.

"(2) COVERED PROGRAM.—

"(A) IN GENERAL.—The term 'covered program' means each location of a program operated by a public or private entity that, with respect to one or more children who are unrelated to the owner or operator of the program—

"(i) provides a residential environment, such as—

"(I) a program with a wilderness or outdoor experience, expedition, or intervention;

"(II) a boot camp experience or other experience designed to simulate characteristics of basic military training or correctional regimes;

"(III) a therapeutic boarding school; or

"(IV) a behavioral modification program; and

"(ii) operates with a focus on serving children with—

"(I) emotional, behavioral, or mental health problems or disorders; or

"(II) problems with alcohol or substance abuse.

"(B) EXCLUSION.—The term 'covered program' does not include—

"(i) a hospital licensed by the State;

"(ii) a foster family home or group home that provides 24-hour substitute care for children placed away from their parents or guardians and for whom the State child welfare services agency has placement and care responsibility and that is licensed and regulated by the State as a foster family home or group home; or

"(iii) a psychiatric residential treatment facility that is certified as meeting the requirements specified in regulations promulgated for such facilities under section 1905(h)(1)(A) of the Social Security Act and that provides psychiatric services for which medical assistance is available under a State plan under title XIX of such Act.

"(3) PROTECTION AND ADVOCACY SYSTEM.—The term 'protection and advocacy system' means a protection and advocacy system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

"(b) ELIGIBILITY REQUIREMENTS.—To be eligible to receive a grant under section 106, a State shall—

"(1) not later than three years after the date of the enactment of this section, develop policies and procedures to prevent child abuse and neglect at covered programs operating in such State, including having in effect health and safety licensing requirements applicable to and necessary for the operation of each location of such covered programs that include, at a minimum—

"(A) standards that meet or exceed the standards required under section 3(a)(1) of the Stop Child Abuse in Residential Programs for Teens Act of 2008;

"(B) the provision of essential food, water, clothing, shelter, and medical care necessary to maintain physical health, mental health, and general safety of children at such programs;

"(C) policies for emergency medical care preparedness and response, including minimum staff training and qualifications for such responses; and

"(D) notification to appropriate staff at covered programs if their position of employment meets the definition of mandated reporter, as defined by the State;

"(2) develop policies and procedures to monitor and enforce compliance with the licensing requirements developed in accordance with paragraph (1), including—

"(A) designating an agency to be responsible, in collaboration and consultation with State agencies providing human services (including child protective services, and services to children with emotional, psychological, developmental, or behavioral dysfunctions, impairments, disorders, or alcohol or substance abuse), State law enforcement officials, the appropriate protection and advocacy system, and courts of competent jurisdiction, for monitoring and enforcing such compliance;

"(B) a State licensing application process through which any individual seeking to operate a covered program would be required to disclose all previous substantiated reports of child abuse and neglect and all child deaths at any businesses previously or currently owned or operated by such individual, except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect;

"(C) conducting unannounced site inspections not less often than once every two years at each location of a covered program;

"(D) creating a database, to be integrated with the annual State data reports required under section 106(d), of reports of child abuse and neglect at covered programs operating in the State, except that such reports shall

not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect; and

"(E) implementing a policy of graduated sanctions, including fines and suspension and revocation of licences, against covered programs operating in the State that are out of compliance with such health and safety licensing requirements;

"(3) if the State is not yet satisfying the requirements of this subsection, in accordance with a determination made pursuant to subsection (c), develop policies and procedures for notifying the Secretary and the appropriate protection and advocacy system of any report of child abuse and neglect at a covered program operating in the State not later than 30 days after the appropriate State entity, or subdivision thereof, determines such report should be investigated and not later than 48 hours in the event of a fatality;

"(4) if the Secretary determines that the State is satisfying the requirements of this subsection, in accordance with a determination made pursuant to subsection (c), develop policies and procedures for notifying the Secretary if—

"(A) the State determines there is evidence of a pattern of violations of the standards required under paragraph (1) at a covered program operating in the State or by an owner or operator of such a program; or

"(B) there is a child fatality at a covered program operating in the State;

"(5) develop policies and procedures for establishing and maintaining a publicly available database of all covered programs operating in the State, including the name and each location of each such program and the name of the owner and operator of each such program, information on reports of child abuse and neglect at such programs (except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect), violations of standards required under paragraph (1), and all penalties levied against such programs;

"(6) annually submit to the Secretary a report that includes—

"(A) the name and each location of all covered programs, including the names of the owners and operators of such programs operating in the State, and any violations of State licensing requirements developed pursuant to subsection (b)(1); and

"(B) a description of State activities to monitor and enforce such State licensing requirements, including the names of owners and operators of each covered program that underwent a site inspection by the State, and a summary of the results and any actions taken; and

"(7) if the Secretary determines that the State is satisfying the requirements of this subsection, in accordance with a determination made pursuant to subsection (c), develop policies and procedures to report to the appropriate protection and advocacy system any case of the death of an individual under the control or supervision of a covered program not later than 48 hours after the State is informed of such death.

"(c) SECRETARIAL DETERMINATION.—The Secretary shall not determine that a State's licensing requirements, monitoring, and enforcement of covered programs operating in the State satisfy the requirements of this subsection (b) unless—

"(1) the State implements licensing requirements for such covered programs that meet or exceed the standards required under subsection (b)(1);

"(2) the State designates an agency to be responsible for monitoring and enforcing compliance with such licensing requirements;

"(3) the State conducts unannounced site inspections of each location of such covered programs not less often than once every two years;

"(4) the State creates a database of such covered programs, to include information on reports of child abuse and neglect at such programs (except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect);

"(5) the State implements a policy of graduated sanctions, including fines and suspension and revocation of licenses against such covered programs that are out of compliance with the health and safety licensing requirements under subsection (b)(1); and

"(6) after a review of assessments conducted under section 3(b)(2)(B) of the Stop Child Abuse in Residential Programs for Teens Act of 2008, the Secretary determines the State is appropriately investigating and responding to allegations of child abuse and neglect at such covered programs.

"(d) OVERSIGHT.—

"(1) IN GENERAL.—Beginning two years after the date of the enactment of the Stop Child Abuse in Residential Programs for Teens Act of 2008, the Secretary shall implement a process for continued monitoring of each State that is determined to be satisfying the licensing, monitoring, and enforcement requirements

of subsection (b), in accordance with a determination made pursuant to subsection (c), with respect to the performance of each such State regarding—

"(A) preventing child abuse and neglect at covered programs operating in each such State; and

"(B) enforcing the licensing standards described in subsection (b)(1).

"(2) EVALUATIONS.—The process required under paragraph (1) shall include in each State, at a minimum—

"(A) an investigation not later than 60 days after receipt by the Secretary of a report from a State, or a subdivision thereof, of child abuse and neglect at a covered program operating in the State, and submission of findings to appropriate law enforcement or other local entity where necessary, if the report indicates—

"(i) a child fatality at such program; or

"(ii) there is evidence of a pattern of violations of the standards required under subsection (b)(1) at such program or by an owner or operator of such program;

"(B) annually, a random sample of review of cases of reports of child abuse and neglect investigated at covered programs operating in the State to assess the State's performance with respect to the appropriateness of response to and investigation of reports of child abuse and neglect at covered programs and the appropriateness of legal actions taken against responsible parties in such cases; and

"(C) unannounced site inspections of covered programs operating in the State to monitor compliance with the standards required under section 3(a) of the Stop Child Abuse in Residential Programs for Teens Act of 2008.

"(3) ENFORCEMENT.—If the Secretary determines, pursuant to an evaluation under this subsection, that a State is not adequately implementing, monitoring, and enforcing the licensing requirements of subsection (b)(1), the Secretary shall require, for a period of not less than one year, that—

"(A) the State shall inform the Secretary of each instance there is a report to be investigated of child abuse and neglect at a covered program operating in the State; and

"(B) the Secretary and the appropriate local agency shall jointly investigate such report.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 112(a)(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106h(a)(1)) is amended by inserting before the period at the end the following: ", and $200,000,000 for each of fiscal years 2009 through 2013".

(c) CONFORMING AMENDMENTS.—

(1) COORDINATION WITH AVAILABLE RESOURCES.—Section 103(c)(1)(D) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5104(c)(1)(D)) is amended by inserting after "specific" the following: "(including reports of child abuse and neglect occurring at covered programs (except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect), as such term is defined in section 114)".

(2) FURTHER REQUIREMENT.—Section 106(b)(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(1)) is amended by adding at the end the following new subparagraph:

"(C) FURTHER REQUIREMENT.—To be eligible to receive a grant under this section, a State shall comply with the requirements under section 114(b) and shall include in the State plan submitted pursuant to subparagraph (A) a description of the activities the State will carry out to comply with the requirements under such section 114(b).".

(3) ANNUAL STATE DATA REPORTS.—Section 106(d) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(d)) is amended—

(A) in paragraph (1), by inserting before the period at the end the following: "(including reports of child abuse and neglect occurring at covered programs (except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect), as such term is defined in section 114)"; and

(B) in paragraph (6), by inserting before the period at the end the following: "or who were in the care of a covered program, as such term is defined in section 114".

(d) CLERICAL AMENDMENT.—Section 1(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note) is amended by inserting after the item relating to section 113 the following new item:

"Sec. 114. Additional eligibility requirements for grants to States to prevent child abuse and neglect at residential programs.".

I. PURPOSE

The purpose of H.R. 5876, the "Stop Child Abuse in Residential Programs for Teens Act of 2008" is to ensure the safety of children attending residential programs that focus on serving children with emotional, behavioral or mental health problems by requiring basic health and safety standards and enforcement.

II. COMMITTEE ACTION

110TH CONGRESS

Full Committee hearing on "Cases of Child Neglect and Abuse at Private Residential Treatment Facilities"

On Thursday, October 10, 2007, the Committee on Education and Labor held a hearing in Washington, D.C. entitled "Cases of Child Neglect and Abuse at Private Residential Treatment Facilities." The purpose of the hearing was to gain an understanding of the nature and magnitude of abuses committed against children at private residential programs. The hearing focused on ten cases of neglect and abuse that resulted in the death of a child, and included testimony from parents whose children died at abusive programs. Testifying before the full Committee were Greg Kutz, Managing Director, Forensic Audits and Special Investigations, U.S. Government Accountability Office; Cynthia Harvey, Mother of a child victim; Bob Bacon, Father of a child victim; Paul Lewis, Father of a child victim; Allison Pinto, Assistant Professor, Louis de la Parte Florida Medical Health Institute, University of South Florida; and Jan Moss, Executive Director, National Association of Therapeutic Schools and Programs.

Full Committee Hearing: "Child Abuse and Deceptive Marketing by Residential Programs for Teens"

On Thursday, April 24, 2008, the Committee on Education and Labor held a hearing in Washington, D.C. entitled "Child Abuse and Deceptive Marketing by Residential Programs for Teens." The purpose of the hearing was to highlight eight additional cases of neglect and abuse, some of which resulted in death, and to examine the questionable marketing practices employed by private residential programs and referral agencies to entice parents. The hearing included testimony from individuals who were abused, or witnessed abuse, as teenagers enrolled in residential programs. Further, this hearing demonstrated the degree to which the states and the federal government do not sufficiently regulate and oversee private residential programs. Testifying before the full Committee were Greg Kutz, Managing Director, Forensic Audits and Special Investigations, U.S. Government Accountability Office; Kathryn Whitehead, Former Program Participant, Mountain Mission School, Condon, Montana; Jon Martin-Crawford, Former Program Participant, the Family Foundation School, Hancock, New York; Christopher Bellonci, MD, Medical Director and Senior Clinical Consultant, Walker School, Needham, Massachusetts; and Kay Brown, Director, Education, Workforce and Income Security, U.S. Government Accountability Office.

Introduction of the "Stop Child Abuse in Residential Programs for Teens Act of 2008"

On April 23, 2008, Representatives George Miller of California, Carolyn McCarthy of New York, Donald Payne, Phil Hare, Ruben Hinojosa, Robert C. "Bobby" Scott of Virginia, Raul M. Grijalva, Danny Davis of Illinois, Dale Kildee, Lynn Woolsey, and Dennis Kucinich introduced H.R. 5876, the "Stop Child Abuse in Residential Programs for Teens Act of 2008." The bill sets federal health and safety standards for private residential programs for children under the age of eighteen and requires the Assistant Secretary for Children and Families of the Department of Health and Human Services to monitor and enforce the standards. The bill also amends the Child Abuse and Prevention Treatment Act (CAPTA) to require states to implement similar licensing standards for public and private residential programs.

Full Committee markup of H.R. 5876

On Wednesday, May 14, 2008, the Committee on Education and Labor considered H.R. 5876 in legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 27–16. The Committee adopted the following amendments:

1. An amendment in the nature of a substitute offered by Mr. Miller, adopted by voice vote. The amendment in the nature of a substitute contains minor technical changes and the following additions to H.R. 5876:

• Amends the Child Abuse Prevention and Treatment Act to require the state licensing and enforcement provisions included in H.R. 5876 apply to public residential programs as well as private programs.

• Amends the Child Abuse Prevention and Treatment Act to require states that are meeting the licensing and enforcement requirements of H.R. 5876 to develop policies and procedures for reporting to the appropriate protection and advocacy system any case of death of an individual at a covered program, not later than forty-eight hours after the state is informed of the death.

2. An amendment offered by Mr. Rob Bishop (UT), adopted by voice vote. The amendment clarifies the confidential nature of personally identifiable information of abuse reports in state and federal databases.

The Committee rejected five amendments by rollcall vote.

III. Summary of the Bill

Federal response

H.R. 5876 provides immediate federal action to ensure the safety of children attending private residential programs that focus on serving children with emotional, behavioral, or mental health problems or disorders, or problems with alcohol or substance abuse. This includes programs such as therapeutic wilderness programs, boot camps, therapeutic boarding schools, and behavioral modification programs. The bill requires the Assistant Secretary for Children and Families of the Department of Health and Human Services (HHS) to oversee and enforce minimum standards that provide for the basic health and safety of children at covered programs. These standards include prohibitions on inappropriate and abusive

practices of care giving, and requirements for staff training, reasonable access to a telephone, disclosure to parents of staff roles, responsibilities, and training, procedures for notification to parents of changes to a child's medical treatment, and notification to parents of violations of health and safety standards. The standards also require covered programs to include a hyperlink or URL address of an HHS website on all promotional and informational material. The Assistant Secretary must promulgate regulations and enforce interim regulations on these standards within 180 days after enactment of H.R. 5876.

H.R. 5876 requires the Assistant Secretary to monitor compliance with and enforce these standards. The bill requires the Assistant Secretary to conduct unannounced site inspections of all covered programs at least once every two years in order to evaluate compliance with the federal health and safety standards. The bill also establishes an ongoing review process for investigating and evaluating reports of child abuse and neglect at covered programs. H.R. 5876 requires states to inform the Secretary within thirty days of a report of child abuse and neglect at a covered program and within forty-eight hours of a fatality at a covered program. The Assistant Secretary is required to investigate these reports to determine if a violation of the federal standards occurred. The bill further requires that such reviews not interfere with the state's investigation, be completed within sixty days, and include an assessment of the state's performance with respect to the appropriateness of response, investigation, and legal action against responsible parties. H.R. 5876 specifies that the Assistant Secretary will discontinue both the scheduled unannounced site inspections and the ongoing review process in a state meeting the licensing standards and enforcement process required under the bill.

In order to enforce compliance with the federal minimum standards, the bill requires the Assistant Secretary to establish civil penalties for violations of the federal standards. Owner or operators of covered programs are subject to civil penalties of $50,000 per violation of any of the federal standards.

If the Assistant Secretary determines that the administrative enforcement process authorized by this bill has not remedied a violation of a regulation promulgated under the bill, the Assistant Secretary must refer the ongoing violation to the Attorney General to take action to remedy the violation. While the Assistant Secretary must make a referral in certain circumstances, the Attorney General may commence an action to compel compliance with the regulations without such a referral.

In addition to the enforcement authority granted to the Assistant Secretary and the Attorney General, an individual harmed because of a violation of a regulation promulgated pursuant to H.R. 5876 may commence a lawsuit to obtain relief for the violation. While such a suit brought for a violation of a regulation arises under federal law, the bill does not create exclusive jurisdiction in federal courts. A court that hears an action by an individual who claims harm or the likelihood of harm for a violation of a regulation may award money damages, including punitive damages where warranted, and attorneys' fees, and may fashion an appropriate equitable remedy, including injunctive relief. Because children participating in a covered program are not to be considered prisoners, the

restrictions, limitations, and procedures called for in the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997e, do not apply to a suit brought for a violation of a regulation promulgated under this bill.

The Assistant Secretary is required to establish and maintain publicly available websites that include a database with information on each covered program and the program's history of violations of the federal and state standards required by the bill. The database must also include information on any fatalities to a child under the care of a program, as well as information on owners or operators who are in violation of the standards in one program and who own or operate another covered program. The database shall also include information on any penalties levied against a program by the Assistant Secretary and any judgments or orders issued by a court against a program. A website must also provide information on best practices for helping adolescents with mental health problems. The Assistant Secretary is also required to establish a national toll-free telephone hotline to receive complaints of child abuse and neglect at covered programs.

Fifty million dollars are authorized annually from fiscal year 2009 through 2013 for the Assistant Secretary to carry out these activities.

State response

H.R. 5876 amends the Child Abuse Prevention and Treatment Act (CAPTA) to require that states take the primary responsibility for licensing public and private residential programs that focus on serving children with emotional, behavioral, or mental health problems or disorders, or problems with alcohol or substance abuse. The bill provides states three years to develop policies and procedures for preventing child abuse and neglect at covered programs operating in the state, including health and safety licensing requirements necessary for the operation of a program. The standards must meet or exceed the federal standards in the bill, address the provision of essential food, water, clothing, shelter, and medical care necessary to maintain physical health, mental health, and general safety of children, and meet other standards.

States are required to monitor and enforce compliance with the licensing requirements including, conducting unannounced site inspections at least once every two years, creating a database of reports of child abuse and neglect at covered programs, and implementing a policy of graduated sanctions against programs that are out of compliance. States must also develop a publicly available database of covered programs operating in the state, including information on reports of child abuse and neglect and violations of state licensing standards.

Until states are adequately meeting the requirements of H.R. 5876, as determined by the Secretary of Health and Human Services, states must report instances of child abuse and neglect at covered programs within thirty days to the Secretary and to the appropriate protection and advocacy system in the state. These reports must be made within forty-eight hours of a child fatality at a covered program. Once a state is adequately meeting the requirements of the bill, however, states are no longer required to report all cases of child abuse and neglect at covered programs directly to

the Secretary. Instead, states in compliance with the standards are required to make reports to the Secretary only in instances of a child fatality at a covered program and when there is evidence of a pattern of violations of the standards by an owner or operator. In states meeting the requirements, the Secretary must annually conduct a random sample of case reviews of child abuse and neglect at covered programs in order to evaluate the appropriateness of the response to and investigation of reports of child abuse and neglect. The Secretary must also conduct unannounced site inspections of covered programs in the state but no longer must visit each location once every two years. If the Secretary then determines the state is not adequately implementing, monitoring and enforcing the licensing requirements, the Secretary shall take additional steps.

Authorization for Title I of CAPTA is increased to $200,000,000 for each of fiscal year 2009–2013.

IV. Committee Views

Overview

Since the early 1990's, a wide range of state agencies and private companies have established hundreds of residential programs for teens in the United States, including wilderness programs, boot camps, therapeutic boarding schools, and behavior modification programs. The stated purpose of many of these programs is to provide a less restrictive alternative to incarceration or hospitalization for children with emotional or behavioral problems. A 2006 report by the Substance Abuse and Mental Health Services Administration (SAMHSA) identified seventy-one different types of residential programs across the country.[1] An investigation by the Government Accountability Office (GAO) found private residential programs listed in forty-eight states.[2]

Reports of child fatalities and cases of child abuse and neglect at residential programs are widely documented. The GAO testified before the Committee about inexcusable and inhumane treatment of children at residential programs. On April 24, 2008, Greg Kutz, the Managing Director of Forensic Audits and Special Investigations at GAO testified to the Full Committee that "boys at one boot camp were required to stand with bags over their head and a hangman's noose around their neck. The rope on this noose was tightened to simulate a hanging. The individual responsible for this told officers that this was an appropriate form of discipline."[3] GAO also testified about a case study in which a 15-year-old died at a private residential program from a severed neck artery after being held face down in the dirt for forty-five minutes. Another 15-year-old showed signs of dehydration including blurred vision, vomiting water, and frequent stumbling for two days before she collapsed while hiking.

[1] U.S. Department of Health and Human Services, State Regulation of Residential Facilities for Children with Mental Illness. DHHS Pub. No. (SMA) 07–4167. Rockville, Maryland: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 2006.

[2] GAO, Residential Programs: Selected Cases of Death, Abuse, and Deceptive Marketing, GAO–08–713T (Washington, D.C.: April 24, 2008).

[3] Testimony of Greg Kutz, Managing Director of Forensic Audits and Special Investigations, Government Accountability Office, U.S. House of Representatives, Committee on Education and Labor, Child Abuse and Deceptive Marketing by Residential Programs for Teens, April 24, 2008.

She then lay dead on the ground for another eighteen hours before the program's "highly trained survival experts" checked on her.[4]

At the hearing before the Full Committee on October 10, 2007, Bob Bacon testified about the twenty-one day calendar that was reconstructed by investigators and described the last weeks of his son's life. He stated that his son

> Aaron spent 14 of his 20 days on the trail without any food whatsoever, while being forced to hike 8–10 miles per day. On the days he did have food it consisted of undercooked lentils, lizards, scorpions, trail mix, and a celebrated canned peach on the 13th. On top of this, with temperatures below freezing, he endured 13 of 20 nights with only a thin wool blanket, plus 5 nights without warmth or protection of any kind. Aaron complained of severe stomach pain and asked to see a doctor as early as the third day of hiking, and by the tenth day had lost all control of his bodily functions; but unbelievably, as he got weaker and lost nearly 20% of his body weight they repeatedly refused to send him to a doctor.[5]

Unfortunately these shocking examples of abuse and neglect are not isolated incidents. State reported data to the National Child Abuse and Neglect Data System (NCANDS) from 2005 found that thirty-four states reported 1,503 incidents of maltreatment of youth by residential facility staff.[6] Of the states surveyed by GAO, twenty-eight reported at least one youth fatality in a residential facility in 2006. The GAO concluded that because of significant gaps in the data that states collect and report, both statistics understate the incidence of maltreatment and death at residential programs.[7]

Despite the fact that these programs serve some of our nation's most vulnerable youth, and despite the problems with abuse and death at residential programs, state standards and regulations for these types of programs vary greatly. Some types of residential teen programs may be monitored by state agencies and staffed with licensed professionals that provide high standards of care. However, many states have inadequate or nonexistent regulations and oversight to protect children in residential teen programs. The GAO found major gaps in the licensing and oversight of residential facilities, and the GAO reports that many types of facilities are exempt from state licensing requirements altogether. In addition, GAO found that because of the gaps in licensing, programs can choose to avoid standards and oversight. For example, in some states, a residential treatment program self-identified as a private boarding school would not be regulated by the state. But the same facility must be licensed if it self-identified as a residential treatment center. After concluding an investigation of the current status of federal and state oversight of residential programs, the GAO concluded that "[w]eaknesses in the current federal-state regu-

---

[4] GAO, Residential Treatment Programs: Concerns Regarding Abuse and Death in Certain Programs for Troubled Youth, GAO–08–146T (Washington, D.C.: Oct. 10, 2007).

[5] Testimony of Bob Bacon, Father of child victim, U.S. House of Representatives, Committee on Education and Labor, Cases of Child Neglect and Abuse at Private Residential Treatment Facilities, October 10, 2008.

[6] U.S. Department of Health and Human Services, Child Maltreatment 2005.

[7] GAO, Residential Facilities: Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth with Behavioral and Emotional Challenges, GAO–08–346 (Washington, D.C.: May 2008).

latory structure have failed to safeguard the civil rights and well-being of some of the nation's most vulnerable youth."[8]

The Committee is also concerned that some individuals in the residential program industry are enticing parents and children by using deceptive marketing and questionable practices. A GAO investigation revealed a number of fraudulent methods and irresponsible claims used by both referral service agencies and residential programs.[9] The investigators posed as parents of a troubled teen needing help and made calls to both programs and referral service agencies. The investigators were pitched spurious medical advice, fraudulent tax schemes, and inaccurate information, all apparently designed to get into parents' pockets. Most of the information provided in these calls was about how to finance the exorbitant tuition being charged, rather than about properly screening children and matching children with the appropriate programs based on the child's needs. Furthermore, a blatant conflict-of-interest was uncovered when it was revealed that a referral service owned by a husband consistently made referrals to a residential program owned by his wife. These schemes do not merely represent bad business practices. Greater than that, such practices directly or indirectly contribute to a decision making process that may lead to the abuse or death of a child. Parents are desperately looking for answers to help their struggling child, and instead of getting reliable accurate information, they are given self-serving and unreliable advice. The GAO investigation underscores the increasing need to provide parents with objective information and hold the industry accountable.

Federal standards and oversight

The Committee believes the safety and basic well-being of children in residential programs is an urgent and critical matter and must be dealt with accordingly. As a result of a loose patchwork of state regulations, we have a crisis situation where large numbers of children are being abused and even dying in residential programs. Moreover, deceptive marketing practices make it very difficult for parents to make informed and safe choices for their children. Furthermore, the GAO case studies suggest that local responses to incidents of abuse have sometimes been inadequate or inappropriate. H.R. 5876 takes numerous steps to stop this abuse and keep children safe. The intent of this bill is not to limit the choices available to parents but instead to give parents the information they need to make safe choices for their children and to ensure that, notwithstanding the residential setting, children are safe from abusive and neglectful treatment.

The Committee believes the fastest and most effective way to end child abuse at residential programs is to immediately implement federal standards and oversight of residential programs. This action is imperative if we are to prevent kids from dying or from suffering abuse and trauma that will undoubtedly affect them for years to come. Therefore, H.R. 5876 provides immediate federal action in response to an urgent problem of abuse, and sometimes

[8] GAO, Residential Facilities: Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth with Behavioral and Emotional Challenges, GAO–08–346 (Washington, D.C.: May 2008).

[9] GAO, Residential Programs: Selected Cases of Death, Abuse, and Deceptive Marketing, GAO–08–713T (Washington, D.C.: April 24, 2008).

death, in private residential programs for teens that are loosely (if at all) regulated and monitored by states. Within 180 days after enactment of H.R. 5876, the Assistant Secretary must issue regulations on minimum standards at private residential programs and begin unannounced site inspections. The standards included in H.R. 5876 are minimum standards of care needed to keep kids safe in residential programs and to provide parents with the information they need. The Committee believes states and programs should require additional and stronger standards to ensure children with emotional, behavioral, mental health, or substance abuse problems are receiving effective therapeutic practices. However, that was not the focus of this bill.

The federal standard prohibiting child abuse and neglect at covered programs may be questioned as unnecessary or too obvious, because all states prohibit child abuse and neglect. However, the GAO case studies and testimony heard by the Committee raise concerns that there are instances in which abuse and neglect of children at residential programs has been ignored, dismissed, or accepted by staff and/or local authorities as part of acceptable therapy. The Committee believes that abuse and inhumane treatment of children is inexcusable and illegal. Therefore, H.R. 5876 explicitly prohibits such behavior.

In the GAO investigation described earlier, state officials reported that a central cause of youth maltreatment at residential facilities is the improper application of seclusion and restraint.[10] In fact, a large number of injuries and deaths at residential facilities seem to be attributable to improper restraint procedures. The Committee concurs with the current standard of practice that requires that seclusion and restraint be utilized only by staff trained in these techniques, such that these interventions are practiced safely and appropriately in very limited circumstances. Therefore, H.R. 5876 includes a standard that requires programs to limit the use of restraint and seclusion procedures to the methods described in the Public Health Service Act, 42 U.S.C. § 300—300a–6. The Committee believes these standards will support ethical and safe procedures of care for children and greatly limit the likelihood of children dying or experiencing significant trauma or injury from restraint and seclusion procedures.

H.R. 5876 also includes a standard that prohibits acts of physical or mental abuse designed to humiliate, degrade, or undermine a child's self-respect. This standard is based closely on Oregon's licensing regulations[11] for residential programs. The Committee believes this standard is important to move towards the elimination of abuse and inhumane treatment of children at residential programs.

The federal standards also require children at covered programs to have reasonable access to a telephone for making and receiving calls with as much privacy as possible. This standard is based on public health laws, which the Committee believes exist in every state, that provide for access to telephones for committed patients on psychiatric inpatient wards. The Committee believes the isola-

[10] GAO, Residential Facilities: Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth with Behavioral and Emotional Challenges, GAO–08–346 (Washington, D.C.: May 2008).

[11] Oregon Admin. R. 413–210–0190 (2008).

tion inherent in residential programs makes extending this right to children appropriate and necessary. It provides a safeguard and a lifeline for children isolated from their families. The Committee has heard concerns that this provision will allow teens the right to continue to communicate with drug dealers back home or have other potentially destructive outcomes. But the Committee is confident that the "reasonable access" requirement can be executed in an appropriate and effective manner.

The federal standards also require some staff training. For instance, H.R. 5876 requires staff to be familiar with what constitutes child abuse and neglect in their state, as well as being familiar with the state requirements for mandated reporters and procedures for reporting child abuse and neglect in the state. This standard is not intended to alter state definitions of mandated reporters. After a careful review of state mandated reporting laws, however, the Committee believes that most—if not all—staff at residential programs are already mandated reporters of child abuse and neglect in each state. Yet, there is little evidence of staff at these programs reporting incidents of abuse and neglect. These standards are designed to prevent child abuse and neglect by ensuring all staff are aware of what constitutes abuse and of their legal responsibility to report abuse. The bill also requires staff at programs such as wilderness or boot camps to be familiar with the signs, symptoms, and appropriate responses associated with heatstroke, dehydration, and hypothermia. The GAO investigation revealed a number of instances where children's serious medical conditions were ignored by staff and attributed to "faking it."[12] This standard is meant to provide staff with the ability to recognize serious medical conditions that have led to death at residential programs.

H.R. 5876 includes standards to help give parents additional tools for making safe choices for their children. The bill requires programs to notify parents of violations of the federal and state standards and of on-site investigations of child abuse and neglect. The bill further requires parents to be notified about any changes in the child's medical treatment. It also requires all promotional and informational materials produced by a program to include a hyperlink or URL address of the website created by the Assistant Secretary. This website includes a database with information on covered programs, including any history of fatalities and violations of standards. The Committee believes this will help empower parents to make safe decisions for their child's treatment and care.

H.R. 5876 requires monitoring and enforcement of the federal standards through a number of mechanisms. First, the Assistant Secretary is required to conduct unannounced site inspections of all covered programs at least once every two years. Second, states are required to inform the Secretary of reports of child abuse and neglect at covered programs. The Assistant Secretary is required to establish an ongoing review process for investigating and evaluating these reports. This process must include an investigation to determine if there was a violation of federal standards, and it must include an assessment of the state's response to and investigation

[12] GAO, Residential Treatment Programs: Concerns Regarding Abuse and Death in Certain Programs for Troubled Youth, GAO–08–146T (Washington, D.C.: Oct. 10, 2007).

of reports of child abuse and neglect at covered programs and appropriateness of legal action against responsible parties. Civil penalties for violations of the standards are also established.

The Committee recognizes that strong enforcement is critical to the success of the minimum standards regulations. Unfortunately, the evidence gathered by the Committee indicates that some operators of covered programs habitually neglect or abuse children and place at risk the lives entrusted to their care. That is why the bill provides that where a covered program persists in violating the minimum standards regulations, the Assistant Secretary must refer the matter to the Attorney General. The Department of Justice, therefore, is empowered to bring a lawsuit to force an operator to follow the regulations. The Department of Justice need not wait for a referral, however, and is empowered to bring such a suit of its own volition.

A crucial piece of the enforcement mechanism is the provision providing for a private right of action. An individual harmed by a covered program's violation of the regulations detailing the minimum standard promulgated under this bill should be made whole. In addition, injunctive or other equitable remedies should be available to prevent harm to participants in covered programs. To date, state law has not been sufficient to fully recompense victims of abuse, nor to allow courts to expeditiously enjoin harm to participants.

Individuals harmed, or in imminent danger of being harmed, by a violation of the regulations promulgated under H.R. 5876 may have a remedy under state tort law. The private right of action provision, however, provides for a uniform cause of action for a person injured because of a violation of a minimum standard, victims who, in many cases, are participating in a covered program in a state that is not their domicile. The Committee believes that nation-wide uniformity of the minimum standards together with a uniform mechanism of enforcement of those standards will prevent covered programs from moving from state-to-state, organizing and operating in states with the most relaxed duties of care or most restrictive tort award and injunctive relief.

The private right of action provision provides covered programs with ample, specific notice of the violations for which they may be successfully sued under this provision. The provision only allows suits for violations of the detailed regulations promulgated by the Assistant Secretary under this bill. This provision does not allow suits for violations of the more general minimum standards enumerated in the bill itself. The private right of action established by H.R. 5876 may be pursued in federal court. The bill does not, however, require that such claims be adjudicated in federal court or create exclusive jurisdiction in the federal courts. The Committee also believes that, in this context, prevention is the most effective remedy and, therefore, intends that the authorization of punitive damages will act as a deterrent for covered programs that might otherwise violate the regulations required by this bill.

The Committee believes that victims should be empowered to seek redress for any injury suffered as a result of a violation of this bill. Accordingly, H.R. 5876 provides for the award of reasonable attorneys' fees to increase the likelihood of securing effective counsel. By allowing the courts the authority to award reasonable attor-

neys' fees, it is the Committee's expectation that attorneys will be willing to take meritorious cases that may potentially save lives, but which, absent this provision, would be financially prohibitive to undertake.

The Committee believes the creation of publicly available websites and a national hotline by H.R. 5876 are key components to keeping children safe. The bill requires the Assistant Secretary to establish a website with a database of information on covered programs. The Committee envisions the creation of this website and the information contained therein as a collaborative effort between the states and the Assistant Secretary. This website will help parents learn which programs have a history of abuse and which programs are providing safe care for children. The website will contain information that will assist parents to make safe choices for their children under very difficult circumstances. The national hotline created by this bill is also intended to help parents and children who do not know where to turn for help. Because many parents send their children out of state to residential programs, the children may be unsure of who to contact for assistance within the state. The hotline is designed to minimize this problem.

State response

The Committee believes the federal standards and oversight are critical to quickly and successfully restrain child abuse and neglect at residential programs. However, the Committee also believes that ultimately states must take on the primary responsibility for ensuring the safety of children at these programs. For that reason, the bill requires that once states assume primary responsibility for standards and enforcement of residential programs, the federal involvement will greatly decrease.

Contingent on receiving CAPTA funds, states are required under the bill to implement licensing standards as a condition to operate public and private residential programs focused on serving children with emotional, behavioral, substance abuse, and mental health problems. These licensing standards must meet or exceed the federal standards. Though the Committee believes these standards are critical to the safety of kids in covered programs, it views these standards as very minimal and strongly encourages states to enact stronger and more comprehensive standards that will facilitate the provision of effective services. For example, this bill does not include standards on staff qualifications relating to mental health services. States are encouraged to consider developing standards. Moreover, the Committee hopes states will take additional steps to help parents understand the differences in the types of programs operating in a state.

H.R. 5876 also requires states to effectively monitor the minimum health and safety licensing standards. This may be achieved in part by conducting unannounced site inspections at least once every two years, implementing a policy of graduated sanctions for failing to meet state standards, and requiring the licensing application process to disclose prior substantiated reports of child abuse and neglect and all child deaths at a business previously or currently owned or operated by the applicant. The bill also requires states to create a publicly available database of information on covered programs and a history of problems at each program.

Once a state has in place appropriate licensing and monitoring, federal involvement greatly diminishes. States meeting the bill's requirements are released from the requirement to report each incident of child abuse and neglect at a covered program to the Secretary. In addition, the requirement that the Secretary conduct unannounced site inspections of every program at least once every two years is also eliminated in a state meeting the requirements. As a result, the two main mechanisms for the Secretary to oversee the federal standards are eliminated when a state successfully assumes the responsibility of ensuring children's safety at residential programs.

V. SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Provides that the short title is the "Stop Child Abuse in Residential Programs for Teens Act 2008."

Sec. 2. Definitions

Sets forth definitions for the terms "Assistant Secretary," "Child, Child Abuse and Neglect," "Covered Program," "Protection and Advocacy System," and "State."

Sec. 3. Standards and enforcement

This section is composed of four subsections: (a) Minimum Standards, (b) Monitoring and Enforcement, (c) Dissemination of Information, and (d) Action.

Subsection (a) provides minimum health and safety standards for children residing in covered programs and requires the Assistant Secretary for Children and Families of the Department of Health and Human Services to issue regulations to enforce those standards applicable to covered programs that have an affect on interstate commerce. The minimum standards prohibit physical and mental abuse and neglect, inappropriate and degrading disciplinary techniques, denying patients the essentials necessary to maintain physical and mental health and safety, denying reasonable access to outside communications, and the unnecessary use of seclusion and restraint. The subsection also requires program policies and minimal qualification regarding staffs' training in emergency response techniques and mandates abuse and neglect reporting. The section requires staff criminal background checks and mandates communication with a parent or guardian whenever there are proposed changes in medical treatment. Parents must also be informed of any investigations regarding child abuse reports and health and safety violations at covered programs.

Subsection (b) requires the Assistant Secretary to conduct unannounced site inspections at each covered program at least once every two years until such time that the Secretary has determined that the state has established appropriate health and safety licensing requirements. The subsection also establishes guidelines for an ongoing review process for investigating and evaluating reports of child abuse and neglect at covered programs, including a determination of violations of standards and the appropriateness of states' investigations and responses. This subsection also requires the Assistant Secretary to promulgate regulations establishing civil

penalties for violations of standards, not to exceed $50,000 per violation.

Subsection (c) requires the establishment and maintenance of a publicly accessible website that provides information regarding covered program ownership and compliance with state child abuse licensing requirements. It also provides for the development of a national child abuse and neglect toll-free hotline for reporting complaints and violations against covered programs.

Subsection (d) requires a process by which complaints made to the hotline are reviewed, communicated to state and local law enforcement, and by which violations are investigated. There is also a mandate for collaboration between the national hotline authorized in this Act and other state, regional, and national hotlines.

Sec. 4. Enforcement by the Attorney General

Authorizes the Assistant Secretary to refer to the Attorney General for appropriate action any violations of this Act not remedied through the administrative enforcement process. It also allows the Attorney General to file a complaint, sua sponte, in any court of competent jurisdiction to seek equitable relief.

Sec. 5. Private rights of action

Allows suit against a covered program to seek equitable relief, damages (including punitive damages), or both, for harm caused by a violation of a regulation promulgated under this Act. This section also authorizes an award of attorneys' fees. The provisions of section 7 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e) shall not apply to actions brought under this Act.

Sec. 6. Report

Describes the annual reporting requirements of the Secretary of Health and Human Services, in coordination with the Attorney General.

Sec. 7. Authorization of appropriations

Authorizes $50,000,000 for each fiscal year 2009 through 2013 for activities required by the Act (excluding the amendment made by section 8 of this Act).

Sec. 8. Additional eligibility requirements for grants to states to prevent child abuse and neglect at residential programs

This section is divided into four subsections: (a) an Amendment to Title I of the Child Abuse Prevention and Treatment Act (CAPTA; 42 U.S.C. 5101 et seq.), (b) Authorization (c) Conforming Amendments, and (d) Clerical Amendments.

Subsection (a) amends Title I of CAPTA by adding definitions of the terms "Child," "Covered Program," and "Protection and Advocacy System." It also provides eligibility requirements for receipt of grants under section 106 of CAPTA, including the prevention of abuse and neglect in covered programs by creating licensing requirements that exceed the federal standards created in Section 3; the development of policies and procedures for monitoring and enforcing compliance with licensing requirements through a designated state agency; when a state is not satisfying requirements, the development of policies and procedures for notifying the Sec-

retary and the appropriate protection and advocacy systems of child abuse and neglect at covered programs; if states have satisfied requirements, the development of policies and procedures for notifying the Secretary of evidence of a pattern of violations of standards at covered programs. The state also shall develop and maintain a public database with information related covered programs, including ownership, license, and violations. The Secretary shall include a process for monitoring states once licensing, monitoring, and enforcement requirements have been satisfied.

Subsection (b) amends section 112(a)(1) of CAPTA to authorize $200,000,000 for each fiscal year 2009 through 2013.

Subsection (c) amends section 103(c)(1)(D) of CAPTA to include "reports of child abuse and neglect occurring at covered programs . . . as such term is defined in section 114." Further requirements for grant eligibility include state compliance with section 114 of CAPTA and submission of a plan describing the activities the state will undertake in order to carry out the requirements of section 114 of CAPTA.

VI. Explanation of Amendments

The Amendment in the Nature of a Substitute, as amended, is explained in the body of this report.

VII. Application of Law to the Legislative Branch

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. H.R. 5876 provides federal and state standards to prevent child abuse at covered residential treatment facilities and programs. The bill does not prevent legislative branch employees' coverage under this legislation.

VIII. Unfunded Mandate Statement

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. H.R. 5876 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA).

IX. Earmark Statement

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.

X. Roll Call

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 1 BILL: H.R. 5876 DATE: 5/14/2008
AMENDMENT NUMBER: 2 FAILED: 17 AYES / 24 NOES
SPONSOR/AMENDMENT: McKEON / SUBSTITUTE

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT				X
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH				X
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER				X
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT				X
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY				X
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
{vacancy}				
TOTALS	**17**	**24**		**7**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 2 BILL: H.R. 5876 DATE: 5/14/2008
AMENDMENT NUMBER: 3 FAILED: 18 AYES / 25 NOES
SPONSOR/AMENDMENT: PRICE / PROHIBITING EARMARKS AND LIMITING FUNDING

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT				X
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER				X
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT				X
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**18**	**25**		**5**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 3 BILL: H.R. 5876 DATE: 5/14/2008
AMENDMENT NUMBER: 4 FAILED: 17 AYES / 25 NOES
SPONSOR/AMENDMENT: PRICE / CAPPING TRIAL LAWYERS' FEES AT $1,000/HOUR

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT				X
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER				X
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER				X
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT				X
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**17**	**25**		**6**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 4 BILL: H.R. 5876 DATE: 5/14/2008
AMENDMENT NUMBER: 6 FAILED: 17 AYES / 26 NOES
SPONSOR/AMENDMENT: FOXX / STRIKE SECTION 5 (PRIVATE RIGHT TO SUE)

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT				X
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS		X		
Mr. KELLER				X
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT				X
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**17**	**26**		**5**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 5 **BILL: H.R. 5876** **DATE: 5/14/2008**
AMENDMENT NUMBER **PASSED: 27 AYES / 16 NOES**
SPONSOR/AMENDMENT: McCARTHY / FAVORABLY REPORT BILL AS AMENDED

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS				X
Mr. SCOTT				X
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. SUSAN DAVIS	X			
Mr. DANNY DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Ms. SANCHEZ	X			
Mr. SARBANES	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. YARMUTH	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Mr. McKEON		X		
Mr. PETRI		X		
Mr. HOEKSTRA				X
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS	X			
Mr. KELLER				X
Mr. WILSON		X		
Mr. KLINE		X		
Mrs. McMORRIS RODGERS		X		
Mr. MARCHANT				X
Mr. PRICE		X		
Mr. FORTUÑO	X			
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mr. KUHL		X		
Mr. ROB BISHOP		X		
Mr. DAVID DAVIS		X		
Mr. WALBERG		X		
[vacancy]				
TOTALS	**27**	**16**		**5**

XI. Statement of Oversight Findings and Recommendations of the Committee

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

XII. New Budget Authority and CBO Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 5876 from the Director of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 22, 2008.

Hon. George Miller,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5876, the Stop Child Abuse in Residential Programs for Teens Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jonathan Morancy.

Sincerely,

Robert A. Sunshine
(For Peter R. Orszag, Director).

Enclosure.

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

Summary: H.R. 5876 would authorize 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.

Enacting H.R. 5876 would not affect direct spending. The bill would create new civil penalties, which CBO estimates would have an insignificant effect on revenues over the 2009–2018 period.

H.R. 5876 contains mandates on the private sector as defined in the Unfunded Mandates Reform Act (UMRA) but CBO estimates that the direct costs of those mandates would be below the annual threshold established by UMRA ($136 million in 2008, adjusted annually for inflation).

H.R. 5876 contains no new intergovernmental mandates as defined in UMRA. The bill would establish additional eligibility requirements for states that receive grants for the prevention of child abuse and neglect and for treatment programs, but such requirements would be incurred voluntarily.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 5876 is shown in the following table. The costs

of this legislation fall within budget functions 500 (education, training, employment, and social services) and 600 (income security).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Grants and Other Activities:						
Authorization Level	200	200	200	200	200	1,000
Estimated Outlays	11	98	142	178	193	622
Enforcement of Standards:						
Authorization Level	50	50	50	50	50	250
Estimated Outlays	15	28	40	50	50	183
Total						
Authorization Level	250	250	250	250	250	1,250
Estimated Outlays	26	126	182	228	243	805

[1] The bill would increase revenue by less than $500,000 in 2009 and over the 2009–2018 period.

Basis of estimate: For this estimate, CBO assumes that H.R. 5876 will be enacted near the end of fiscal year 2008, the amounts authorized by the bill will be appropriated by the beginning of each fiscal year, and outlays will follow historical spending patterns.

H.R. 5876 would authorize the appropriation of $200 million per year for various purposes related to combating child abuse and neglect, including grants and research. (The current authorization, which provides such sums as may be necessary, expires at the end of fiscal year 2008.) In 2008, $64 million was appropriated for those activities. The bill also would authorize the appropriation of $50 million per year for fiscal years 2009 through 2013 to assist with enforcing new standards for certain residential treatment programs for children.

Estimated impact on state, local, and tribal governments: H.R. 5876 contains no intergovernmental mandates as defined in UMRA. The bill would establish additional eligibility requirements for states that receive grants for the prevention of child abuse and neglect and for treatment programs. As conditions of assistance, those requirements would be incurred voluntarily.

Estimated impact on the private sector: H.R. 5876 contains mandates as defined by UMRA on operators of private residential programs for teenagers with emotional, behavioral, or mental health problems or disorders, or who have problems with alcohol or substance abuse. The covered programs may include, among others, those that provide a wilderness or outdoor experience as well as boot-camps that simulate military training. The bill delineates minimum health and safety standards those programs must meet.

Many states already have standards that residential programs for youth must meet, and some industry groups regulate themselves by requiring members to pledge to follow certain guidelines. Consequently, the additional cost of complying with the mandates in the bill would vary widely depending on the conditions under which the program currently operates. CBO expects that the direct cost of the mandate to private-sector entities would be below the annual threshold established by UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Jonathan Morancy; Impact on State, Local, and Tribal Governments: Burke Doherty; Impact on the Private Sector: Nabeel Alsalam.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

XIII. Statement of General Performance Goals and Objectives

In accordance with clause 3(c) of rule XIII of the House of Representatives, the goal of H.R. 5876 is to ensure the safety of children attending residential programs that focus on serving children with emotional, behavioral or mental health problems. The Committee expects the Department of Health and Human Services to comply with H.R. 5876 and implement the changes to the law in accordance with these stated goals.

XIV. Constitutional Authority Statement

Under clause 3(d)(1) of rule XIII of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 5876. The Committee believes that the amendments made by this bill are within Congress' authority under Article I, section 8, clauses 1, 3 and 18 of the U.S. Constitution.

XV. Committee Estimate

Clause 3(d)(2) of rule XIII of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 5876. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

XVI. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

CHILD ABUSE PREVENTION AND TREATMENT ACT

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) * * *

(b) Table of Contents.—The table of contents is as follows:

TABLE OF CONTENTS

* * * * * * *

TITLE I—GENERAL PROGRAM

* * * * * * *

Sec. 114. Additional eligibility requirements for grants to States to prevent child abuse and neglect at residential programs.

* * * * * * *

TITLE I—GENERAL PROGRAM

* * * * * * *

SEC. 103. NATIONAL CLEARINGHOUSE FOR INFORMATION RELATING TO CHILD ABUSE.

(a) * * *

* * * * * * *

(c) COORDINATION WITH AVAILABLE RESOURCES.—

(1) IN GENERAL.—In establishing a national clearinghouse as required by subsection (a), the Secretary shall—

(A) * * *

* * * * * * *

(D) through a national data collection and analysis program and in consultation with appropriate State and local agencies and experts in the field, collect, compile, and make available State child abuse and neglect reporting information which, to the extent practical, shall be universal and case specific *(including reports of child abuse and neglect occurring at covered programs (except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect), as such term is defined in section 114)* and integrated with other case-based foster care and adoption data collected by the Secretary;

* * * * * * *

SEC. 106. GRANTS TO STATES FOR CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAMS.

(a) * * *

(b) ELIGIBILITY REQUIREMENTS.—

(1) STATE PLAN.—

(A) * * *

* * * * * * *

(C) FURTHER REQUIREMENT.—To be eligible to receive a grant under this section, a State shall comply with the requirements under section 114(b) and shall include in the State plan submitted pursuant to subparagraph (A) a description of the activities the State will carry out to comply with the requirements under such section 114(b).

* * * * * * *

(d) ANNUAL STATE DATA REPORTS.—Each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

(1) The number of children who were reported to the State during the year as abused or neglected *(including reports of child abuse and neglect occurring at covered programs (except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect), as such term is defined in section 114)*.

* * * * * * *

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care *or who were in the care of a covered program, as such term is defined in section 114*.

* * * * * * *

SEC. 112. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—

(1) GENERAL AUTHORIZATION.—There are authorized to be appropriated to carry out this title $120,000,000 for fiscal year 2004 and such sums as may be necessary for each of the fiscal years 2005 through 2008*, and $200,000,000 for each of fiscal years 2009 through 2013*.

* * * * * * *

SEC. 114. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR GRANTS TO STATES TO PREVENT CHILD ABUSE AND NEGLECT AT RESIDENTIAL PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) CHILD.—The term "child" means an individual who has not attained the age of 18.

(2) COVERED PROGRAM.—

(A) IN GENERAL.—The term "covered program" means each location of a program operated by a public or private entity that, with respect to one or more children who are unrelated to the owner or operator of the program—

(i) provides a residential environment, such as—

(I) a program with a wilderness or outdoor experience, expedition, or intervention;

(II) a boot camp experience or other experience designed to simulate characteristics of basic military training or correctional regimes;

(III) a therapeutic boarding school; or

(IV) a behavioral modification program; and

(ii) operates with a focus on serving children with—

(I) emotional, behavioral, or mental health problems or disorders; or

(II) problems with alcohol or substance abuse.

(B) EXCLUSION.—The term "covered program" does not include—

(i) a hospital licensed by the State;

(ii) a foster family home or group home that provides 24-hour substitute care for children place away from their parents or guardians and for whom the State child welfare services agency has placement and care responsibility and that is licensed and regulated by the State as a foster family home or group home; or

(iii) a psychiatric residential treatment facility that is certified as meeting the requirements specified in regulations promulgated for such facilities under section 1905(h)(1)(A) of the Social Security Act and that provides psychiatric services for which medical assistance is available under a State plan under title XIX of such Act.

(3) PROTECTION AND ADVOCACY SYSTEM.—The term "protection and advocacy system" means a protection and advocacy

system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

(b) ELIGIBILITY REQUIREMENTS.—To be eligible to receive a grant under section 106, a State shall—

(1) not later than three years after the date of the enactment of this section, develop policies and procedures to prevent child abuse and neglect at covered programs operating in such State, including having in effect health and safety licensing requirements applicable to and necessary for the operation of each location of such covered programs that include, at a minimum—

(A) standards that meet or exceed the standards required under section 3(a)(1) of the Stop Child Abuse in Residential Programs for Teens Act of 2008;

(B) the provision of essential food, water, clothing, shelter, and medical care necessary to maintain physical health, mental health, and general safety of children at such programs;

(C) policies for emergency medical care preparedness and response, including minimum staff training and qualifications for such responses; and

(D) notification to appropriate staff at covered programs if their position of employment meets the definition of mandated reporter, as defined by the State;

(2) develop policies and procedures to monitor and enforce compliance with the licensing requirements developed in accordance with paragraph (1), including—

(A) designating an agency to be responsible, in collaboration and consultation with State agencies providing human services (including child protective services, and services to children with emotional, psychological, developmental, or behavioral dysfunctions, impairments, disorders, or alcohol or substance abuse), State law enforcement officials, the appropriate protection and advocacy system, and courts of competent jurisdiction, for monitoring and enforcing such compliance;

(B) a State licensing application process through which any individual seeking to operate a covered program would be required to disclose all previous substantiated reports of child abuse and neglect and all child deaths at any businesses previously or currently owned or operated by such individual, except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect;

(C) conducting unannounced site inspections not less often than once every two years at each location of a covered program;

(D) creating a database, to be integrated with the annual State data reports required under section 106(d), of reports of child abuse and neglect at covered programs operating in the State, except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect; and

(E) implementing a policy of graduated sanctions, including fines and suspension and revocation of licences, against covered programs operating in the State that are out of compliance with such health and safety licensing requirements;

(3) if the State is not yet satisfying the requirements of this subsection, in accordance with a determination made pursuant to subsection (c), develop policies and procedures for notifying the Secretary and the appropriate protection and advocacy system of any report of child abuse and neglect at a covered program operating in the State not later than 30 days after the appropriate State entity, or subdivision thereof, determines such report should be investigated and not later than 48 hours in the event of a fatality;

(4) if the Secretary determines that the State is satisfying the requirements of this subsection, in accordance with a determination made pursuant to subsection (c), develop policies and procedures for notifying the Secretary if—

(A) the State determines there is evidence of a pattern of violations of the standards required under paragraph (1) at a covered program operating in the State or by an owner or operator of such a program; or

(B) there is a child fatality at a covered program operating in the State;

(5) develop policies and procedures for establishing and maintaining a publicly available database of all covered programs operating in the State, including the name and each location of each such program and the name of the owner and operator of each such program, information on reports of child abuse and neglect at such programs (except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect), violations of standards required under paragraph (1), and all penalties levied against such programs;

(6) annually submit to the Secretary a report that includes—

(A) the name and each location of all covered programs, including the names of the owners and operators of such programs, operating in the State, and any violations of State licensing requirements developed pursuant to subsection (b)(1); and

(B) a description of State activities to monitor and enforce such State licensing requirements, including the names of owners and operators of each covered program that underwent a site inspection by the State, and a summary of the results and any actions taken; and

(7) if the Secretary determines that the State is satisfying the requirements of this subsection, in accordance with a determination made pursuant to subsection (c), develop and policies and procedures to report to the appropriate protection and advocacy system any case of the death of an individual under the control or supervision of a covered program not later than 48 hours after the State is informed of such death.

(c) SECRETARIAL DETERMINATION.—The Secretary shall not determine that a State's licensing requirements, monitoring, and enforce-

ment of covered programs operating in the State satisfy the requirements of this subsection (b) unless—

(1) the State implements licensing requirements for such covered programs that meet or exceed the standards required under subsection (b)(1);

(2) the State designates an agency to be responsible for monitoring and enforcing compliance with such licensing requirements;

(3) the State conducts unannounced site inspections of each location of such covered programs not less often than once every two years;

(4) the State creates a database of such covered programs, to include information on reports of child abuse and neglect at such programs (except that such reports shall not contain any personally identifiable information relating to the identity of individuals who were the victims of such child abuse and neglect);

(5) the State implements a policy of graduated sanctions, including fines and suspension and revocation of licenses against such covered programs that are out of compliance with the health and safety licensing requirements under subsection (b)(1); and

(6) after a review of assessments conducted under section 3(b)(2)(B) of the Stop Child Abuse in Residential Programs for Teens Act of 2008, the Secretary determines the State is appropriately investigating and responding to allegations of child abuse and neglect at such covered programs.

(d) OVERSIGHT.—

(1) IN GENERAL.—Beginning two years after the date of the enactment of the Stop Child Abuse in Residential Programs for Teens Act of 2008, the Secretary shall implement a process for continued monitoring of each State that is determined to be satisfying the licensing, monitoring, and enforcement requirements of subsection (b), in accordance with a determination made pursuant to subsection (c), with respect to the performance of each such State regarding—

(A) preventing child abuse and neglect at covered programs operating in each such State; and

(B) enforcing the licensing standards described in subsection (b)(1).

(2) EVALUATIONS.—The process required under paragraph (1) shall include in each State, at a minimum—

(A) an investigation not later than 60 days after receipt by the Secretary of a report from a State, or a subdivision thereof, of child abuse and neglect at a covered program operating in the State, and submission of findings to appropriate law enforcement or other local entity where necessary, if the report indicates—

(i) a child fatality at such program; or

(ii) there is evidence of a pattern of violations of the standards required under subsection (b)(1) at such program or by an owner or operator of such program;

(B) annually, a random sample of review of cases of reports of child abuse and neglect investigated at covered programs operating in the State to assess the State's perform-

ance with respect to the appropriateness of response to and investigation of reports of child abuse and neglect at covered programs and the appropriateness of legal actions taken against responsible parties in such cases; and

(C) unannounced site inspections of covered programs operating in the State to monitor compliance with the standards required under section 3(a) of the Stop Child Abuse in Residential Programs for Teens Act of 2008.

(3) ENFORCEMENT.—If the Secretary determines, pursuant to an evaluation under this subsection, that a State is not adequately implementing, monitoring, and enforcing the licensing requirements of subsection (b)(1), the Secretary shall require, for a period of not less than one year, that—

(A) the State shall inform the Secretary of each instance there is a report to be investigated of child abuse and neglect at a covered program operating in the State; and

(B) the Secretary and the appropriate local agency shall jointly investigate such report.

* * * * * * *

XVII. COMMITTEE CORRESPONDENCE

None.

REPUBLICAN VIEWS ON H.R. 5876

Republican Members of the House Committee on Education and Labor are committed to stopping child abuse and neglect at residential treatment programs. We have supported the Child Abuse Prevention and Treatment Act (CAPTA) since the program's creation in 1974. CAPTA provides federal funding to states in support of prevention, assessment, investigation, prosecution, and treatment activities, and also provides grants to public agencies and nonprofit organizations for demonstration programs and projects. We have also supported the federal oversight role established under CAPTA in setting a minimum definition of child abuse and neglect and supporting research, evaluation, technical assistance, and data collection activities.

Instances of child neglect, abuse, and death at residential treatment programs are unacceptable and must be stopped. However, Committee Republicans do not believe that it is necessary to create the proposed dual regulatory structure set out in H.R. 5876 in order to protect children in such programs. The legislation Chairman Miller introduced provides a good starting point for Congress to work from, but the bill as written is unworkable and unrealistic. It creates a highly duplicative process at the federal and state level, and mandates unachievable timelines. It is the hope of Committee Republicans to work with Chairman Miller and Democrats on the Committee to produce a bipartisan bill that addresses these concerns and develops the best, most effective and appropriate safeguards to protect young people placed in residential treatment programs.

BACKGROUND ON THE CONGRESSIONAL INTEREST IN RESIDENTIAL TREATMENT PROGRAMS

Since the early 1990s, hundreds of residential treatment programs—sometimes referred to as behavior modification facilities or boot camps—are believed to have been established by U.S. companies, both within the U.S. and abroad. The treatment methods employed by some of these programs have been controversial, with some allegations of severe child abuse by some of these programs' staff.

While the true size of the industry is not known, it is widely estimated that thousands of American children are enrolled in juvenile and adult boot camp programs. In 2004, the Chicago Tribune reported that "a trade association and other experts say the schools are a $1 billion to $1.2 billion industry that serves 10,000 to 14,000 school-age children."

In April 2005, Chairman Miller (then Senior Democratic Member) introduced H.R. 1738, legislation intended to prevent child abuse at residential treatment facilities in the U.S. and abroad. In December 2005, Chairman Miller requested a study by the U.S.

Government Accountability Office (GAO) of residential treatment programs and the for-profit companies that own and operate these programs. The request was made in response to allegations of child abuse, fraud, and other violations of law by companies that operate these facilities.

In October 2007, following the release of an initial GAO report on case studies of abuse and neglect at residential treatment programs, Chairman Miller convened an oversight hearing on the issue of wilderness therapy programs or "boot camps." The GAO report that was the subject of the hearing highlighted a number of cases of abuse and neglect at private residential treatment programs throughout the country. In April 2008, the Committee held a second oversight hearing on this issue to highlight further cases of abuse and neglect at residential treatment programs and to discuss the more comprehensive GAO report, originally requested by Chairman Miller, highlighting data from, and oversight of, private and public residential treatment programs.

During the hearings, Committee Republicans took the opportunity to ask the expert witnesses whether they were aware of a comprehensive list of how many programs were in existence, by whom were they operated, and where they were located. Unfortunately, even the GAO, which has been investigating these programs for years, was unable to provide these basic facts during the hearings. This has been a major obstacle to the monitoring and regulation of residential treatment programs.

COMMITTEE CONSIDERATION OF H.R. 5876, CHILD ABUSE IN RESIDENTIAL PROGRAMS FOR TEENS ACT OF 2008

Less than a day before the second oversight hearing in April 2008, Chairman Miller introduced H.R. 5876, the Stop Child Abuse in Residential Programs for Teens Act of 2008, with ten cosponsors. The bill requires the federal government and states to establish systems of standards and enforcement to curtail instances of child neglect, abuse and death at privately owned and run residential treatment centers. The bill has two separate components.

The first section establishes a new program, authorized at $50 million each year for 5 years, through which the Assistant Secretary for Children and Families at the U.S. Department of Health and Human Services (HHS) is required to create national standards and a federal system of review, evaluation, and penalties for privately owned and run residential treatment centers. Under the legislation, a covered program is defined as one that provides a residential environment and serves children with emotional, behavioral, or mental health problems or problems with alcohol or substance abuse. The bill does not cover hospitals accredited by a state, facilities that are licensed and regulated by the state as homes for children in foster care, or psychiatric residential treatment facilities covered under the Social Security Act.

The bill establishes 14 areas in which the Assistant Secretary must develop federal standards, and allows for the creation of any other standards the Assistant Secretary deems necessary. The 14 standards relate to disciplinary techniques, conditions of employment for staff members, provision of emergency medical care, and disclosure on promotional and informational materials, among oth-

ers. The Assistant Secretary is also required to establish a national system of monitoring and enforcement to begin as soon as the standards are final.

H.R. 5876 requires the Assistant Secretary to put the standards in place within 180 days of the bill's enactment and begin the monitoring and enforcement of those standards on the date the standards are put in place.

The Assistant Secretary must also conduct unannounced site inspections of each location at least once every two years and must investigate all reports of abuse and neglect. The Assistant Secretary is required to establish civil penalties for violations of the standards up to $50,000 per violation.

In addition, the Assistant Secretary is required to create a public website that discloses information about each program relating to their compliance with the standards and state licensing requirements, any deaths that occurred to a child at a program, and any penalties levied by the state against a program. The Assistant Secretary must also establish a national toll-free telephone hotline to receive complaints of child abuse and neglect at covered programs.

The bill also authorizes a private right of action for any person suffering an injury-in-fact as a result of the violation of the standards.

The second section amends title I of CAPTA to add a section requiring the establishment of a state system of standards and enforcement of these facilities, within three years from the date of enactment, in order for a state to receive CAPTA funding. This section is authorized at $200 million (an increase of $95 million over current CAPTA funding levels). Currently every state (as well as the District of Columbia and the 5 territories) receives state grant funding under CAPTA. The state grants program was funded at just under $27 million in FY2008 with grant amounts ranging from over $3 million for California to $93,000 for Vermont.

In this section of the bill, a covered program includes those covered under the federal system but adds in government operated entities that focus on serving children with emotional, behavioral, or mental health disorders or problems with alcohol or substance abuse.

Under this section of the legislation, a state is required to develop standards that meet or exceed the federal standards defined in the first section of the bill. Each state is also required to develop policies and procedures to monitor and enforce compliance with the licensing requirements. If the state is not yet satisfying the requirements, it must develop policies and procedures for notifying the Secretary and the appropriate local child protection and advocacy system of any report of child abuse and neglect at a covered program operating in the state.

Each state is required to develop a publicly available database of all covered programs operating in the state, and must annually submit to the Secretary a report that includes any violations of state licensing requirements and a description of state activities to monitor and enforce licensing requirements, including the names of programs that underwent a site inspection along with a summary of the results.

Beginning two years after the date of the enactment of the bill, the Secretary must implement a process for continued monitoring of each state that is determined to be satisfying the licensing, monitoring, and enforcement requirements. The bill also requires a random sample of review of cases of reports of child abuse and neglect investigated at covered programs to assess the state's performance with respect to the appropriateness of response to reports of child abuse and neglect. The Secretary may also conduct unannounced site inspections of programs operating in the state.

Unfortunately, there were no legislative hearings scheduled on H.R. 5876 before the bill was scheduled for markup by the Committee. As referenced above, the bill was introduced less than 24 hours before the second oversight hearing, which prevented Committee Members on either side of the aisle from delving into any substantive concerns with the introduced bill. Committee Republicans would have appreciated an opportunity to discuss and debate the manner in which the legislation seeks to stem instances of child abuse and neglect at residential treatment programs. It is also important to note that, if legislative hearings had been held, relevant stakeholders, including HHS, state and local governments, and nonprofit organizations that operate residential treatment programs would have had an opportunity to share their thoughts on the legislation with Committee Members, including whether the federal government has the expertise to carry out the provisions of the legislation and the work that states and organizations are currently doing to protect the well-being of children in their care.

If hearings had been held on this legislation, Committee Republicans would have sought to discover the rationale for creating two parallel regulatory structures on the federal and state level, especially due to the fact that state and local governments have traditionally been responsible for regulating private entities and enforcing laws regarding child abuse and neglect. We also would have questioned why the legislation lacks a sunset provision for the federal regulatory structure, despite the majority's assurances that the bill does not envision a permanent federal role. While direct federal monitoring and evaluation of programs is not required once states have systems in place, the federal standards and the private right of action remain in place effectively maintaining the comprehensive federal role in the regulation of private programs. Committee Republicans would have asked why it is necessary to codify a private right of action when state laws clearly allow litigation. And, finally, Members should have had the opportunity to question why the definition of a covered program does not include government run programs in the federal regulatory structure.

Committee Republicans believe that the underlying bill creates a new structure that is redundant; authorizes an HHS regulatory and monitoring role that would undercut our efforts to hold states accountable; does not cover all of the residential treatment programs that have committed abuse against children; and will have negative ramifications if enacted into law.

THE FEDERAL ROLE IN STEMMING ABUSE AND NEGLECT AT RESIDENTIAL TREATMENT PROGRAMS UNDER H.R. 5876

Committee Republicans believe that the federal government should assist states in preventing child abuse by insisting that states regulate and monitor residential treatment programs. We believe that stopping child abuse is a necessary and essential function of state and local government. Unlike the provisions that were included in H.R. 5876, the best way to address this situation is to work within current programs and utilize vehicles like CAPTA to require states to establish a system of standards and enforcement to prevent child abuse and neglect to stop these abuses.

The proper federal role is one that ensures that states fulfill their roles and responsibilities in stopping child abuse in residential treatment facilities. Creating an entirely new bureaucracy at HHS is not the best way to stem these instances of abuse and neglect. The time and money that it would take HHS to develop a new infrastructure for inspecting each and every residential treatment center site could be better spent insisting that states live up to their responsibilities and helping states build their capacity to prevent child abuse.

HHS expressed similar concerns about the new role and responsibility of the federal government established in H.R. 5876. In a letter sent to Committee Members prior to markup, the Department stated:

> 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 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 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 would reach different conclusions about whether abuse and neglect occurred in a covered facility or the standards were violated.

Committee Republicans are also concerned that the timeframe requiring HHS to implement the standards and monitoring system within 180 days after the bill is enacted will not allow the Department to conduct all of the requisite work that will need to be completed to put in place a new federal regulatory structure. This includes, but is not limited to: hiring staff to establish and oversee the new federal regulatory system; training staff to establish and oversee the new federal regulatory system; convening experts and other stakeholders to develop the standards based on the 14 areas

identified in the bill and any additional areas that HHS defines; promulgating an interim rule and seeking public comment on the proposed regulations; determining where all of the covered programs are located; developing and bidding contracts for the monitoring and evaluation of each covered program and location; hiring and training contractors to inspect each program and location; and reporting on the findings at each program and location. It is clear to Committee Republicans that the federal role established in H.R. 5876 is not only duplicative and unnecessary, but also unrealistic and may interfere with the work being done at the state level to combat abuse and neglect.

To this end, during consideration of H.R. 5876, Committee Republicans supported an amendment in the nature of a substitute, offered by Congressman Howard P. "Buck" McKeon (R–CA), the Senior Republican on the Committee. The Republican substitute struck the federal regulatory and enforcement requirement and strengthened the state system currently operating under CAPTA. The substitute maintained the requirements for the establishment of the state standards included in the underlying bill and created a stronger role of federal oversight, which is a more appropriate role for the federal government to play in ending child abuse at residential treatment programs. The substitute also required states to have their systems in place in 18 months, cutting in half the timeline proposed in the underlying bill, and included government run programs in the definition of a "covered program."

The substitute maintained the strong background check requirements that were a part of H.R. 5876 and struck the private right of action and federal sanctions put in place under the legislation. The federal database and national hotline in H.R. 5876 were also preserved in the substitute. In short, the Republican substitute called for a more robust state system of regulation and monitoring of these programs, bolstered by a strong federal oversight authority. Unfortunately, Committee Democrats rejected this commonsense approach.

THE ROLE OF TRIAL LAWYERS, EARMARKS, AND VICTIM PRIVACY IN H.R. 5876

Committee Republicans are concerned that H.R. 5876 opens the door to a new wave of litigation and lawsuit abuse. Currently, state and local laws provide any victim of child abuse and neglect with the right to sue. As such, we believe that a new federal private right of action is unnecessary. For this reason, Congresswoman Virginia Foxx (R–NC) offered an amendment to strike the section of the bill creating a new federal private right of action. While the amendment was rejected, Committee Republicans supported this amendment because state liability laws currently allow persons harmed to seek relief in state courts.

Committee Republicans also supported an amendment to H.R. 5876, offered by Congressman Tom Price (R–GA), that would have capped the hourly expenses of trial lawyers, in any lawsuit brought under the new right of action created by the bill, at $1,000 an hour. The underlying bill requires attorneys' fees to be reasonable; it was the hope of Committee Republicans that members on both sides of the aisle could agree in good faith that any fee above $1,000 an

hour would be unreasonable. Our nation's legal system allows trial lawyers to impose significant costs on businesses and non-profits simply by filing a claim. Many organizations find it is less costly to settle claims even where the claims are frivolous and without merit. The opportunity to recoup outrageously high hourly fees only encourages such behavior. Throughout our history and indeed in many current state and federal laws, attorneys' fees have been capped in order to limit the potential for abusive lawsuits. This amendment would have placed a very reasonable, indeed a generous cap on fees and would help to limit that potential. Unfortunately, the amendment was defeated on a party line vote, making it impossible for Committee Members to ensure that victims of abuse and neglect are protected, not exploited.

Congressman Tom Price (R–GA) offered a second amendment, supported by Committee Republicans, aimed at protecting taxpayers. Specifically, the amendment would have reduced the authorized spending for title I of the Child Abuse Prevention and Treatment Act by 1 percent, prohibited money from being appropriated for earmarks, and prohibited federal money from going to residential treatment programs in violation of the health and safety standards created in the bill. The slight reduction in the authorization level would not have affected the overall funding of the program, and would have allowed for a significant increase in current appropriations to assist states with their efforts to prevent abuse and establish a system of standards and evaluation for residential treatment programs. More importantly, the amendment would have prohibited CAPTA funding from being used for earmarks through the appropriations process in order to ensure that limited funds are distributed to each state, rather than to organizations with paid lobbyists or political connections. Finally, the amendment would have prohibited any program in violation of the standards and requirements set forth in this bill from receiving any CAPTA funding, an important provision lacking in the underlying bill that would deny funding to unscrupulous programs. Unfortunately, the amendment was defeated on a party line vote.

Committee Republicans were able to secure one important improvement to the bill by proposing an amendment, supported by Committee Democrats, on the protection of victims' rights. Congressman Rob Bishop (R–UT) offered an amendment to H.R. 5876 to ensure instances of abuse and neglect reported by states do not contain any information that is personally identifiable of the victim. Reports of abuse and neglect are highly confidential and this amendment ensures victim privacy remains protected and no federal requirement limits that confidentiality. The amendment was agreed to by voice vote.

CONCLUSION

Committee Republicans share the commitment to protect young people enrolled in residential treatment programs and believe that even one instance of abuse, neglect, or death is too many. However, we believe that the most effective and appropriate way to protect those enrolled in these programs is to establish a system of federal oversight that holds states responsible for identification, licensure, regulation, and monitoring.

States have historically been responsible for the direct regulation of child abuse and neglect, including those instances that occur at residential treatment programs. Committee Republicans believe that states should maintain this fundamental responsibility to protect their citizens and monitor the organizations operating within their borders.

BUCK MCKEON.
TOM PETRI.
MARK SOUDER.
JUDY BIGGERT.
JOE WILSON.
JOHN KLINE.
CATHY MCMORRIS RODGERS.
KENNY MARCHANT.
C.W. BOUSTANY, Jr.
VIRGINIA FOXX.
ROB BISHOP.
DAVID DAVIS.
TIM WALBERG.

○