



# Stop Child Abuse in Residential Programs for Teens Act of 2009 (H.R. 911)

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By Varina Winder <sup>1</sup>  
Updated February 27, 2009

On February 9, 2009, Representatives George Miller (D-CA) and Carolyn McCarthy (D-NY) introduced H.R. 911, the “Stop Child Abuse in Residential Programs for Teens Act of 2009.” The legislation is modeled on H.R. 6358, the “Stop Child Abuse in Residential Programs for Teens Act of 2008,” from the 110<sup>th</sup> Congress. The bill passed in the House in June of 2008 and was referred to the Senate Committee on Health, Education, Labor and Pensions, where it remained without any further action.

The bill was voted out of committee without amendments on February 11, 2009 by a bipartisan vote 32-10 and later passed in the House on February 23, 2009 by a bipartisan vote of 205-102. Companion legislation has not yet been introduced in the Senate.

## BACKGROUND

The House Education and Labor Committee chairman, Rep. George Miller, originally introduced H.R. 6358 (then called H.R. 5876) in April 2008 as a response to what he claimed was a “weak patchwork of regulations” that has allowed some programs and states to operate without oversight, leading to cases of death and abuse.

Such cases have been examined in depth by the Government Accountability Office (GAO) and have been the focus of several hearings since fall of 2007. The GAO reported finding gaps between states in the licensing standards and oversight of residential programs, with some states not requiring any licensing standards at all.<sup>2</sup> Another, separate GAO report found that certain private residential programs use deceptive marketing practices in an effort to convince parents to send their troubled children to such programs.<sup>3</sup>

In reintroducing the legislation, Rep. Carolyn McCarthy, who is also chairwoman of the House Subcommittee on Healthy Families and Communities, stated that “...it is crucial that federal

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<sup>2</sup> GAO, “Residential Treatment Programs: Concerns Regarding Abuse and Death in Certain Programs for Troubled Youth,” GAO-08-146T, p 2 (Washington, DC: October 2007). Available online at: <http://www.gao.gov/new.items/d08146t.pdf>

<sup>3</sup> GAO, “Residential Programs: Selected Cases of Death, Abuse and Deceptive Marketing,” GAO-08-713T, p 6 (Washington, DC: April 2008). Available online at: <http://www.gao.gov/new.items/d08713t.pdf>

standards are set in place to prevent the abuse, neglect and deceptive marketing practices that have devastated so many children and families.”<sup>4</sup>

## LEGISLATIVE SUMMARY

**Section 1—Short Title:** This Act may be cited as the “Stop Child Abuse in Residential Programs for Teens Act of 2009.”

**Section 2—Definitions:** This section defines the “Assistant Secretary” as the Assistant Secretary for Children and Families of the Department of Health and Human services, defines a “child” as an individual who has not yet reached the age of 18, and defines “child abuse and “neglect” as the same meaning given in Section 111 of the Child Abuse Prevention and Treatment Act (CAPTA), which is currently defined as “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”<sup>5</sup> “Covered programs” include public and private entities that provide a residential environment (such as boot camps, wilderness experiences, therapeutic boarding schools and behavior modification programs). State-licensed hospitals and foster family homes are not included as covered programs.

**Section 3—Standards and Enforcement:** The Assistant Secretary has up to 180 days to require all covered programs to comply with the following minimum standards:

- 1) prohibition of child abuse and neglect;
- 2) prohibition of disciplinary techniques involving withholding of essential food, water, clothing, shelter, etc.;
- 3) limitation or elimination of restraint and seclusion as behavior modification tools;
- 4) prohibition of acts of physical or mental abuse designed to humiliate or degrade;
- 5) reasonable access to a telephone, with ability to call hotlines reporting instances of abuse;
- 6) requirement of staff and volunteers to become familiar with state definitions of child abuse and neglect;
- 7) requirement of staff and volunteers to become familiar with state law related to mandated reporters and procedures for reporting child abuse and neglect;
- 8) full written disclosure of staff qualifications, roles and training to parents or legal guardians of children at a covered program;
- 9) requirement of staff of wilderness and boot camps to become familiar with signs of heatstroke, dehydration and hypothermia;
- 10) requirement of staff, as a condition of employment, to submit to a criminal history check, including a search of National Sex Offender Registry, state criminal registry and an FBI fingerprint check. Any persons with a felony conviction for child abuse or neglect, spousal abuse, crime against children, or violent crime will be ineligible to serve in a position having any contact with children;
- 11) implementation of policies and procedures for emergency medical care;
- 12) inclusion of a hyperlink in all program materials to a website to be established by the Assistant Secretary (more information on this below);
- 13) implementation of policies to require parents to notify programs of all medication the child is taking and to be notified within 24 hours of any changes or missed dosages of the child’s medications;

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<sup>4</sup> House Committee on Education & Labor Press Release, “Miller, McCarthy Reintroduce Legislation to Stop Child Abuse in Teen Residential Programs,” February 9, 2009. Available online at: <http://edlabor.house.gov/newsroom/2009/02/miller-mccarthy-reintroduce-le.shtml>

<sup>5</sup> 42 U.S.C. 5106g

- 14) establishment of procedures to notify parents or legal guardians within 48 hours of any on-site investigations of child abuse and neglect, violation of health and safety standards or violation of state licensing standards within a covered program; and
- 15) allowance for other standards the Assistant Secretary deems appropriate for providing for the health and safety of children at such covered program.

Within 180 days of the enactment of the bill, the Assistant Secretary shall promulgate and enforce interim regulations to enforce the above-named standards. The Assistant Secretary shall also implement an on-going review process for investigating reports of child abuse within 60 days of such a report, to be implemented in each state until the state satisfies the new CAPTA requirements, explained in Section 7 below. Any owner or operator of a program that is found to be in violation of the standards may be assessed a civil penalty not to exceed \$50,000 per violation.

In accordance with the standard described in number 12, the Assistant Secretary shall establish a public website that contains the name and location of each covered program with each program's history of violations and status with state licensing requirements, including any child deaths that occurred while the child was under care of such program. The Assistant Secretary must also establish a national toll-free hotline for reporting child abuse and neglect at such programs, and establish a process to review the complaints, notify the state and investigate any credible complaint within 30 days of its receipt.

Analysis: Reports of child abuse and neglect and deaths of children while under the care of various types of residential programs, including traditional residential facilities, psychiatric residential facilities, "boot camp" programs, wilderness programs and boarding schools, have been the subject of GAO reports.<sup>6</sup> State reported data to the National Child Abuse and Neglect Data System (NCANDS) from 2005 included 1619 maltreatment incidences by residential facility staff in 34 states.<sup>7</sup> While many residential programs are state-monitored and/or licensed and are staffed by highly-qualified, licensed professionals, the GAO reports that many states do not adequately regulate or oversee all programs.<sup>8</sup> According to Chairman Miller, the "Stop Child Abuse in Residential Teen Programs Act of 2009" builds on the Committee on Education and Labor's two year investigation into cases of child abuse and neglect, including deaths, that occurred in residential facilities and takes a "...step toward...ending [the] culture of abuse and neglect that has put thousands of children in jeopardy."<sup>9</sup> He believes the bill will help end child abuse and stop deceitful marketing practices the GAO uncovered in certain private residential programs by implementing federal standards and oversight of residential programs.<sup>10</sup> Others, including Republicans on the House Education and Labor Committee, believe such standards are unnecessary because all states ban child

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<sup>6</sup> GAO, "Residential Programs: Selected Cases of Death, Abuse and Deceptive Marketing," GAO-08-713T, Table 1 (Washington, DC: April 2008). Available online at:

<http://www.gao.gov/new.items/d08713t.pdf>

<sup>7</sup> U.S. Department of Health and Human Services, Child Maltreatment 2005, p 72. Full report available at: <http://www.acf.hhs.gov/programs/cb/pubs/cm05/cm05.pdf>

<sup>8</sup> GAO, "Residential Facilities: Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth with Behavioral and Emotional Challenges," GAO-08-346, p 14, 26, 30 (Washington, DC: May 2008). Available online at: <http://www.gao.gov/new.items/d08346.pdf>

<sup>9</sup> As stated during Committee on Education and Labor markup of "Stop Child Abuse in Residential Programs for Teens Act of 2009," February 12, 2009. Full transcript is available online at: <http://edlabor.house.gov/documents/111/pdf/markup/FC/HR911-Oversight/GM-statement-HR911.pdf>

<sup>10</sup> Committee on Education and Labor, "The Stop Child Abuse in Residential Programs for Teens Act of 2009." EdLabor Journal, February 10, 2009. Available online at: <http://edlabor.house.gov/blog/2009/02/the-stop-child-abuse-in-reside.shtml>

abuse,<sup>11</sup> however, the GAO reported that certain gaps and exemptions in coverage between different states may place some youth at risk of abuse or neglect.<sup>12</sup> Some of the standards outlined in the bill are based on already-existing state standards.<sup>13</sup>

**Section 4—Enforcement by the Attorney General:** In cases where violations of the standards are not remedied by state enforcement processes, this section stipulates that the case will be referred to the Attorney General. Additionally, the Attorney General may file a complaint in any court for violations not referred to him/her.

**Section 5—Report:** This section requires that the Attorney General and Assistant Secretary submit an annual report, the first one to be completed within a year of the bill's enactment, that summarizes on-going reviews, describes violations and penalties assessed to a covered program, summarizes each state's progress in meeting the new CAPTA requirements, described in Section 7, summarizes the Secretary's oversight activities and provides a description of activities undertaken by the national hotline.

Analysis: The GAO reports conclude that improved data and enhanced oversight would help safeguard children and youth in certain residential programs.<sup>14</sup> While many residential programs operate safe and effective programs, the programs that do not adhere to safety and health standards mar the reputation of other residential programs.<sup>15</sup> Even the GAO, which has been investigating these programs for years, does not have basic information, including how many programs exist, where they operate or by whom they are operated.<sup>16</sup> This section will help to establish procedures for collecting more comprehensive data, which in turn will help the federal government, and eventually states, monitor such programs, keep children safe, and inform parents about programs operating outside of basic health and safety standards.

**Section 6—Authorization of Appropriations:** There is to be \$15,000,000 appropriated to the Secretary of Health and Human Services for each of fiscal years 2010 through 2014 for the purpose of carrying out this legislation (not including Section 7).

**Section 7—Additional Eligibility Requirements for Grants to States to Prevent Child Abuse And Neglect at Residential Programs:** This section amends Title I of CAPTA by adding a new Section 114 that requires states to develop standards and a state licensing application process for covered state programs that meet or exceed the standards delineated in Section 3 of the Act.

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<sup>11</sup> Committee on Education and Labor, "Report on Stop Child Abuse in Residential Programs for Teens Act of 2008," Report 110-669 (Washington, DC: May 2008). Available online at: [http://www.congress.gov/cgi-bin/cpquery/?&sid=cp110VMXPu&refer=&r\\_n=hr669.110&db\\_id=110&item=&sel=TOC\\_75258&](http://www.congress.gov/cgi-bin/cpquery/?&sid=cp110VMXPu&refer=&r_n=hr669.110&db_id=110&item=&sel=TOC_75258&)

<sup>12</sup> GAO, "Residential Programs: Selected Cases of Death, Abuse and Deceptive Marketing," GAO-08-713T, p 26 (Washington, DC: April 2008). Available online at: <http://www.gao.gov/new.items/d08713t.pdf>

<sup>13</sup> The standard listed at number 4 is based on Oregon's licensing regulations for residential programs.

<sup>14</sup> GAO, "Residential Facilities: Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth with Behavioral and Emotional Challenges," GAO-08-346, p 23 (Washington, DC: May 2008). Available online at: <http://www.gao.gov/new.items/d08346.pdf>

<sup>15</sup> Oral testimony of Greg Kuntz, Managing Director, Forensic Audits and Special Investigations, Government Accountability Office, before the Committee on Education and Labor, October 10, 2007. Webcast of full hearing accessible at:

[http://teenadvocatesusa.homestead.com/GAO\\_Report\\_On\\_Residential\\_Treatment\\_Abuse.html](http://teenadvocatesusa.homestead.com/GAO_Report_On_Residential_Treatment_Abuse.html)

<sup>16</sup> Committee on Education and Labor, "Report on Stop Child Abuse in Residential Programs for Teens Act of 2008," Report 110-669 (Washington, DC: May 2008). Available online at: [http://www.congress.gov/cgi-bin/cpquery/?&sid=cp110VMXPu&refer=&r\\_n=hr669.110&db\\_id=110&item=&sel=TOC\\_75258&](http://www.congress.gov/cgi-bin/cpquery/?&sid=cp110VMXPu&refer=&r_n=hr669.110&db_id=110&item=&sel=TOC_75258&)

In order to be eligible for CAPTA grants, the state must develop policies and procedures to meet such standards within three years of the enactment of this section. States will also be responsible for monitoring and enforcing compliance with such standards and licensing procedures and must designate an agency within the state to be responsible for their enforcement. The state must conduct unannounced site inspections at least once every two years at each location of a program and create a non-public database to cover reports of child abuse and neglect at such programs (these reports cannot contain any personally identifiable information of the victims of abuse). The state must also implement a policy of graduated sanctions and revocation of licenses against programs found to be in violation of the standards. An annual report must be submitted to the Secretary of Health and Human Services that includes the name and location of each covered program in the state and a description of all state activities regarding licensing and monitoring of the programs. Should the Secretary find the state not to be in compliance with the standards, or if the report describes repeated violations or the death of a child in a covered program, he/she is to conduct an investigation no later than 60 days after receipt of the report to determine appropriate action.

Section 7 also amends CAPTA to provide for \$235,000,000 in authorized appropriations for each of fiscal years 2010 through 2014 (\$115,000,000 more than is currently authorized).

Analysis: The bill provides for immediate federal oversight of residential programs, and makes states' ability to receive CAPTA funds contingent upon taking up the role of setting standards and enforcing them in public and private programs within three years. Once a state has appropriate licensing and monitoring procedures in place, federal involvement greatly diminishes, with only a report to be submitted to the Secretary of Health and Human Services in order to ensure the state keeps up to date with standards. The bill also recognizes the increased cost to states this will cause, and significantly raises the CAPTA authorization amount. Unfortunately, CAPTA funds have not been appropriated at their fully authorized amount historically (adjusted for inflation, in fiscal year 2008, full CAPTA funding only totaled \$97,582,000).<sup>17</sup>

**Section 8 – Study and Report on Outcomes in Covered Programs:** The bill requires the Secretary of Health and Human services to conduct a study to examine the outcomes for children and both private and public covered programs, and to submit a report with the results of the study to the appropriate House and Senate Committees.

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### **About the Alliance for Children and Families and United Neighborhood Centers of America**

The Alliance for Children and Families, a nonprofit association, was formed by the 1998 merger of Family Service America and the National Association of Homes and Services for Children. The Alliance represents over 370 nonprofit organizations across the nation that provide services and economic empowerment to children and families. Alliance agencies cover a wide spectrum of providers, including a diversity of faith-based organizations and nonsectarian agencies. Together, these organizations deliver more than \$2 billion annually in services to more than 8 million people in nearly 6,700 communities across the United States. More information about the Alliance is available at [www.alliance1.org](http://www.alliance1.org).

United Neighborhood Centers of America (UNCA) is a voluntary, nonprofit, national organization with neighborhood-based member agencies throughout the United States. Formerly known as the National Federation of Settlements and Neighborhood Centers, it was founded in 1911 by Jane Addams and other pioneers of the settlement movement. More information about UNCA is available at [www.unca.org](http://www.unca.org).

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<sup>17</sup> Coalition on Human Needs, "Selected FY 2009 Human Needs Appropriations," February, 2008. Available online at: <http://www.chn.org/pdf/2008/fy09presreqtofy08.pdf>

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