To require certain standards and enforcement provisions to prevent child abuse and neglect in residential programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 23, 2008

Mr. George Miller of California (for himself, Mrs. McCarthy of New York, Mr. Payne, Mr. Hare, Mr. Hinojosa, Mr. Scott of Virginia, Mr. Grijalva, Mr. Davis of Illinois, Mr. Kildee, Ms. Woolsey, and Mr. Kucinich) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To require certain standards and enforcement provisions to prevent child abuse and neglect in residential programs, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

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

4 SEC. 2. DEFINITIONS.

5 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 24-hour residential environment that provides specialized education or treatment, therapy, counseling, behavior modification, discipline, rehabilitation, emotional growth services, or related services, 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 accredited by the State;

(ii) a facility that is licensed and regulated by the State as a group home for children in foster care; 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 mak-
ing and receiving phone calls with as much pri-
vacy as possible, and shall have access to the
appropriate State or local child abuse reporting
hotline number, and the national hotline num-
ber referred to in subsection (c)(2).

(F) Each staff member, including volun-
teers, 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 volun-
teers, 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 responsibil-
ities at such program, including medical, emer-
gency response, and mental health training, to
parents of children at such a program, includ-
ing providing information on any staff changes,
including changes to any staff member’s quali-
fications, 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 vio-
ENCE, 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 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 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 con-
cerning 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 evalu-
ating 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 Treat-
ment 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 sub-
section (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 ap-
propriateness 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 the State’s, or subdivision thereof’s, timeline for investigation; 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 contains, 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 level of compliance with the standards required under subsection (a)(1) and 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 level of standing 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) substantiated reports of child abuse and neglect at each such program;
(iv) 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;

(v) 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

(vi) 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 ac-
tion. Regardless of whether such a referral has been made,
the Attorney General may, \textit{sua sponte}, file a complaint in
any court of competent jurisdiction seeking equitable relief
or any other relief authorized by this Act for such viola-
tion.

SEC. 5. PRIVATE RIGHT OF ACTION.

(a) Maintenance of Action.—Any person may
bring suit for relief of harm caused by a violation of sec-
tion 3(a) in any district court of the United States having
jurisdiction over the parties, without regard to the amount
in controversy or citizenship of the parties.

(b) Relief.—The district court may award appro-
priate equitable relief and damages, and may award punit-
tive damages and costs, including reasonable attorneys’
fees.
(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 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 ac-
tivities and findings conducted pursuant to sub-
section (d) of such section 114.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Sec-
retary 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 PRO-
GRAMS.

(a) In General.—Title I of the Child Abuse Preven-
tion 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 PRO-
GRAMS.

“(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 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 24-hour residential environment that provides specialized education or treatment, therapy, counseling, behavior modification, discipline, rehabilitation, emotional growth services, or related services, 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 accredited by the State;

“(ii) a facility that is licensed and regulated by the State as a group home for children in foster care; 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

“(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 employ-
ment meets the definition of mandated reporter, as defined by the State;
“(2) develop policies and procedures to monitor
and enforce compliance with the licensing require-
ments developed in accordance with paragraph (1),
including—
“(A) designating an agency to be respon-
sible, in collaboration and consultation with
State agencies providing human services (in-
cluding child protective services, and services to
children with emotional, psychological, develop-
mental, or behavioral dysfunctions, impair-
ments, disorders, or alcohol or substance
abuse), State law enforcement officials, the ap-
propriate 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 busi-
nesses previously or currently owned or operated by such individual;

“(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; 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, violations of standards required under paragraph (1), and all penalties levied against such programs; and

“(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.

“(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;

“(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 (e), with
respect to the performance of each such State re-

garding—

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

and

“(B) enforcing the licensing standards de-
scribed 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 oper-
ating 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 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106h) is amended by inserting before the period at the end the following: “, and $200,000,000 for each of fiscal years 2009 through 2013”.

(e) 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, 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, 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 for child abuse and neglect prevention and treatment programs.”.