



**Legislative  
Bulletin.....June 25, 2008**

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**H.R. 6358— Stop Child Abuse in Residential Programs for Teens Act of  
2008  
(Miller, D-CA)**

**Please note the conservative concerns below.**

**Order of Business:** H.R. 6358 is scheduled to be considered on Wednesday, June 25, 2008, under a motion to suspend the rules and pass the bill.

**Background:** H.R. 5876 was considered by the House on Tuesday, June 24, subject to a structured rule, [H. Res. 1276](#). Upon Republicans offering the Motion to Recommit, the Democrats pulled H.R. 5876 from floor consideration. Rep. Miller introduced H.R. 6358 today, which builds upon H.R. 5876 by including the Manager’s Amendment, which passed by a vote of 422-0, **but not** the Republican Motion to Recommit which would have amended the bill to require that a covered facility under the bill create a policy to ensure that parental consent is required before any prescription medication (including contraception), not previously disclosed in writing by such parents or legal guardians, may be dispensed to such child. In addition, the bill does **not** contain the Rep. Shea-Porter amendment, which would have required programs to have policies in place for ensuring that any changes to a child’s medication are made in consultation with a qualified medical professional and a parent or legal guardian of the child.

For more background on the original bill, see the [RSC Legislative Bulletin on H.R. 5876](#) published June 24, 2008.

## Summary of Changes Included in H.R. 6358

The Manager's Amendment made three changes to the definition of "covered program" under H.R. 5876. It expanded the definition to include public residential programs, and it struck the exclusion of psychiatric residential treatment facilities and the exclusion of foster care group homes. The amendment also struck the requirement for the Secretary of Health and Human Services to make unannounced site inspections of covered programs once every two years, and it struck Section 5 (private right of action). The amendment required the Secretary to report to Congress on the activities of the national toll-free hotline, directed the Secretary to conduct a study on the outcomes of residential programs, and amended one of the standards to require a timeline about notifying parents.

This Manager's Amendment, now inserted into the bill, addressed some of the initial concerns of the Ranking Member and other Republicans. According to a document released by the Education and Labor Committee Minority staff, the following concerns were addressed:

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

**Committee Action:** The bill was introduced on June 25, 2008 and referred to the House Committee on Education and Labor, where no official action was taken.

### Conservative Concerns:

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

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

**Furthermore, this bill authorizes \$250 million each year for five years to expand the authority of the federal government, and to implement programs which are already being run at the state level. With such a significant cost, some conservatives may be concerned that this legislation is being considered under suspension of the rules.**

**Administration Position:** A recent [Statement of Administration Policy](#) on H.R. 5876 released by the Administration states:

The Administration strongly supports the overall goal of H.R. 5876, which is to protect children from child abuse and neglect in private facilities. However, the Administration is concerned that H.R. 5876, as reported by the Committee on Education and Labor, would drastically expand the oversight role and enforcement authority of the Federal Government in dealing with private residential programs for teens and potentially conflict and interfere with State enforcement procedures. For the reasons that follow, the Administration strongly opposes House passage of H.R. 5876.

The Administration strongly objects to the expanded role for the Department of Health and Human Services (HHS) under H.R. 5876 and opposes the authorization of spending outside of the President's FY 2009 budget. Under current law, HHS provides funds to States to improve systems that identify and address child abuse and neglect and requires States that receive funding to establish licensing standards for residential programs. Youth who are not in foster care and placed in private institutions that receive no funds from HHS are outside the purview of the Federal Government. In addition, the Federal Government has no oversight over child abuse and neglect investigations. Each State currently has its own process for defining abuse and neglect, investigating allegations of such offenses, and enforcing the law against abuse and neglect. H.R. 5876 would involve the Federal Government in these investigation and enforcement systems by requiring Federal investigations of individual child fatalities as well as Federal-State joint investigations of child abuse and neglect at covered programs. The Administration objects to the expansion of the Federal Government into this traditionally State-regulated area because Federal involvement would likely interfere and conflict with State procedures.

This expansion is also problematic in that it could create a disincentive for States to take on additional responsibilities as would be required by the bill. For example, H.R. 5876 conditions a State's eligibility for Child Abuse Prevention and Treatment Act (CAPTA) funding on its implementation of certain licensing standards and enforcement procedures with respect to the residential programs. However, the bill also expands and then continues the Federal Government's enforcement role over these same residential programs. This expanded role of the Federal Government could have the unintended consequence of lessening both the need and the incentive for States to assume the additional costs and responsibility of implementing these new standards and procedures that would be required for CAPTA funding.

Furthermore, the Administration notes that the bill is inconsistent in its definition of "protection and advocacy" systems, which sometimes refers only to such systems for individuals with developmental disabilities while at other times referencing other types of protection and advocacy systems as well. For example, in referencing "the appropriate protection and advocacy system," the bill appears to include protection and advocacy systems for individuals with other disabilities or with mental illness, but the narrow definition of protection and advocacy system does not include such other systems. The Administration is concerned that this inconsistency could lead to confusion and incomplete coverage of residential programs.

**Cost to Taxpayers:** While no CBO estimate exists for H.R. 6358, CBO estimates that H.R. 5876 authorizes the appropriation of \$250 million per year for fiscal years 2009 through 2013 for child abuse prevention programs. CBO estimates that implementing the bill would cost \$805 million over the 2009-2013 period, assuming appropriation of the authorized amounts. CBO also estimates that enacting H.R. 5876 would not affect direct spending. Furthermore, the bill would create new civil penalties, which CBO estimates would have an insignificant effect on revenues over the 2009-2018 period.

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

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

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** While no House Report exists for H.R. 6358, the Education and Labor Committee, in [House Report 110-669](#), asserts that, "H.R. 5876 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the Rules of the House of Representatives."

**Constitutional Authority:** While no House Report exists for H.R. 6358, the Education and Labor Committee, in [House Report 110-669](#), cites constitutional authority in Article I, section 8, clauses 1, 3 and 18 of the U.S. Constitution (Congress' power to make all Laws

which shall be necessary and proper for carrying into Execution the foregoing Powers).  
**This constitutional authority statement fails to cite a foregoing power of Congress.**  
House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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

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### **S. 3180—A bill to temporarily extend the programs under the Higher Education Act of 1965 (*Kennedy, D-MA*)**

**Order of Business:** S. 3180 is scheduled to be considered on Wednesday, June 25, 2008, under a motion to suspend the rules and pass the resolution.

**Summary:** S. 3180 would extend the authorization (at current, FY08 levels) for the Higher Education Act of 1965 (HEA) through July 31, 2008. The HEA current extension is set to expire on June 30, 2008.

**Additional Background:** The Higher Education Act of 1965 (HEA) provides the majority of the federal government’s higher education financial aid programs. According to CRS, HEA programs comprise the government’s “major student aid programs to support postsecondary education attendance, as well as other significant programs such as those providing aid to special groups of institutions of higher education and support services to enable disadvantaged students to complete secondary school and enter and complete college.” The HEA has been operating under temporary extensions while a long-term extension of the program is negotiated. On February 7, 2008, the House passed H.R. 4137, the College Opportunity and Affordability Act of 2007, which would extend the HEA through FY 2014. The bill has yet to be taken up by the Senate. The last temporary extension of the HEA was passed May 20, 2008 and extended programs through June 30, 2008.

**Committee Action:** S. 3180 was introduced on June 23, 2008 at which time the Senate considered the bill and passed it without amendment by Unanimous Consent.

**Cost to Taxpayers:** A CBO score for S. 3180 is not available.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

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

**Constitutional Authority:** A committee report citing constitutional authority is unavailable.

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## **H. Con. Res. 377— Authorizing the use of the rotunda of the Capitol for a ceremony commemorating the 60th Anniversary of the beginning of the integration of the United States Armed Forces (*Skelton, D-MO*)**

**Order of Business:** H. Con. Res. 377 is scheduled to be considered on Wednesday, June 25, 2008, under a motion to suspend the rules and pass the resolution.

**Summary:** H. Con. Res. 377 would express that it is resolved by the House of Representatives (the Senate concurring) that the House allow;

- “Use of Rotunda-The rotunda of the Capitol is authorized to be used on July 23, 2008, for a ceremony commemorating the 60th anniversary of President Truman’s Executive Order 9981, which states, ‘It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin.’
- “Preparations- Physical preparations for the ceremony referred to in subsection (a) shall be carried out in accordance with such conditions as the Architect of the Capitol may prescribe.”

The bill lists the following findings:

- “African-American men and women have served with distinction, courage, and honor in the United States Armed Forces throughout the history of the nation, even when they were denied the basic constitutional freedoms promised to all citizens;
- “The practice of racial segregation and discrimination in the military prevented African-Americans from receiving the full recognition to which they were entitled as a result of their service;
- “African-Americans, in leading the effort to protest discriminatory treatment in the armed forces, paved the way for successful integration of women, Asians, Hispanics, and other ethnic minorities;
- “The dedicated and heroic service of African-American men and women during World War II led to President Truman’s historic Executive Order 60 years ago that marked the beginning of racial integration in the United States Armed Forces;
- “As a result of President Truman’s action, the United States Armed Forces has become one of the nation’s best examples of an institution committed to equality, opportunity, and advancement based on merit rather than race, religion, or ethnicity; and

- “The heroic contributions of each member of the United States Armed Forces should be honored and celebrated.”

**Committee Action:** H. Con. Res. 377 was introduced on June 23, 2008 and referred to the House Committee on House Administration, which took no further action.

**Cost to Taxpayers:** The resolution does not authorize expenditures.

**Does the Bill Expand the Size and Scope of the Federal Government?** No.

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

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