



National Association of Public
Child Welfare Administrators

an affiliate of the American Public Human Services Association

Legislative Summary

The Residential Treatment Program Safety Act of 2009 (Draft Legislation)

Sen. Orrin Hatch (R-Utah) plans to introduce the Residential Treatment Program Safety Act in the near future. The overarching goal of the legislation is to reduce abuse and neglect in residential programs, such as wilderness or military-style camps, by licensing and accreditation. Similar legislation has been introduced in the House, known as the Stop Child Abuse in Residential Program for Teens Act (H.R. 911).

The draft legislation amends the Child Abuse Prevention and Treatment Act to define residential treatment programs and establishes a National Advisory Committee on Quality and Safety of Residential Treatment Programs at the U.S. Department of Health and Human Services.

New Assurances

As a requirement for receiving state CAPTA grants, a state must certify it is accredited by the Joint Commission on Accreditation of Healthcare Organizations and that it has licensing requirements for its residential treatment programs. The detailed licensing requirements must be included with the certification and will be effective three years after the enactment of the Residential Treatment Program Safety Act. The state must submit to the secretary the list of residential treatment programs (name and location, including name of owner and any violations) annually. The state must also submit a description of monitoring and enforcement activities.

What is a Residential Treatment Program?

The draft bill defines a residential treatment program as one that:

- Is a public or private entity
- Serves one or more children who are unrelated to the owner/operator of the program
- Provides a residential environment
- Delivers specialized or individualized therapeutic interventions
- Provides wilderness or outdoor experiences and expeditions
- Provides boot camp experiences or other experiences designed to simulate characteristics of basic military training or correctional regimes
- Is a therapeutic boarding school

These are programs in which children with emotional, behavioral or mental health problems or disorders and children with alcohol or substance abuse issues are served.

Program that are *NOT* included and do not have to go through the licensing or accreditation process, due to the fact they are *ALREADY* licensed by another process, include:

- Hospitals licensed by the state
- Foster family and group homes that provide 24-hour substitute care for children placed away from their parents or guardians
- Children for whom the state child welfare agency has responsibility
- Psychiatric residential facilities that are licensed under Medicaid

New National Advisory Committee

The draft bill establishes a National Advisory Committee on Quality and Safety of Residential Treatment Programs at the U.S. Department of Health and Human Services. The advisory committee, whose members are appointed by the HHS secretary and the majority and minority leaders in both chambers of Congress, will provide recommendations about licensing and accrediting residential treatment programs.

According to the draft legislation, the advisory committee advises the HHS secretary of the following items regarding these programs:

- Criteria and enforcement of licensing and accreditation
- List of effective standards, inspections and enforcement mechanisms
- Specification of agencies that may license and accredit programs
- List of licensed and accredited programs
- Relationship roles between agencies that provide licensing and accreditation and those seeking licensing and accreditation

Possible HHS Regulations on Residential Treatment Programs

The HHS secretary may then provide regulatory guidance on residential treatment programs and will report the details of the findings and recommendations to Congress and the general public annually. The advisory committee shall terminate on Sept. 30, 2014.

In the draft bill, the secretary will choose agencies that can serve as accrediting bodies. These agencies must be state, regional or national agencies that include voluntary membership for residential treatment programs and have a principal purpose of accreditation. The draft bill specifies that accrediting agencies must operate independently, both administratively and financially, from any trade or membership association.

Accrediting Agency Requirements

In the draft bill, the accrediting agency must assess the following in order to license a residential treatment program:

- Physical and mental health, and general safety of children, employees and volunteers
- Program operation and activities
- Staff qualifications, training and supervision, including volunteers and contracted employees
- Facilities, equipment and supplies
- Recruitment, admissions, enrollment and advertising practices and procedures
- Complaints

The draft language requires accrediting agencies to perform regular on-site inspections and reviews of facilities, including unannounced visits. On an annual basis, the secretary shall provide a list of all agencies it recognizes as meeting the above requirements and shall provide a comprehensive review and evaluation of the agencies. Agencies may not be recognized for more than a five-year period.

Additionally, if the secretary determines that the accrediting agency is not in compliance, they will be allowed 12 months to change and improve.

Agencies that serve as the accrediting or licensing bodies must have review procedures in place, including evaluation and withdrawal processes that adhere to due process laws. Accrediting agencies must provide adequate written requirements and standards, including the deficiencies, for which a residential treatment program is responsible in order to be accredited or licensed. An opportunity for the residential programs to respond to the deficiencies must be provided with a specified timeframe. An appeal process must also be in place. A report will be made available to the general public and the HHS secretary for any program whose final decision for licensing was denied, withdrawn, suspended or whose license or accreditation is terminated.

Residential Treatment Program Requirements

As a condition for residential treatment programs to receive a license or accreditation, they must meet the following requirements:

- Each employee must have a criminal background history check, including a search of the National Sex Offender Registry, the state criminal repository, and an FBI fingerprint check.
- Employees whose background check has revealed a conviction for child abuse or neglect, crimes against children such as pornography, spousal abuse, and crimes involving violence such as rape, sexual assault or homicide will be prohibited from working for the residential treatment program.

Mandatory Arbitration

The draft legislation includes a mandatory initial arbitration rule, where the residential treatment programs may not be accredited or licensed unless they agree to submit to initial arbitration prior to other legal action if a dispute involves the final denial, withdrawal or termination of a license.

Additionally, the residential treatment program may not use another accrediting agency without first notifying the HHS secretary.

NAPCWA Concerns

Due to the additional assurances for limited CAPTA funds, NAPCWA has concerns about the draft legislation. The legislation also will unintentionally create a two-tiered licensing process as states already license residential treatment programs. Now the legislation proposes a second licensing by the accrediting agency.

Contact Information

For more information or if you have any questions or comments, please contact Courteney Holden, senior legislative associate, at (202) 682-0100 x249 or at Courteney.Holden@aphsa.org. You may also contact Rashida Brown, legislative associate, at (202) 682-0100 x225 or Rashida.Brown@aphsa.org.