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Informational Letter

Section 1

Transmittal:	02 INF 14
To:	Local District Commissioners
Issuing Division/Office:	Commissioner's Office
Date:	May 17, 2002 Reissued June 3, 2002
Subject:	Charitable Choice Provision, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193
Suggested Distribution:	Temporary Assistance Staff Food Stamp Benefits Staff Medicaid Directors Employment Coordinators Services Directors Temporary Services Directors TANF Coordinator OCFS Bureau of Youth Development OCFS Community Relations Specialists OCFS Early Childhood Services OCFS Division of Rehabilitative Services OCFS Division of Development & Prevention Services
Contact Person(s):	NYS/OTDA, Rev. Norman, Director, Faith-Based Initiatives, (518) 474-9510 NYS/OCFS, Rev. Leonard Comithier, Director, Ministerial Services (518) 474-9400
Attachments:	1
Attachment Available On – Line:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			PRWORA of 1996, P.L. 104-193		

Section 2

I. Purpose

In response to questions received from local districts and state agencies, the purpose of this INF is to review and clarify the requirements of the Charitable Choice sections of the PRWORA (Personal Responsibility and Work Opportunity Act of 1996; P.L. 104-193), which make provision for charitable organizations, i.e., faith-based organizations (FBOs), to enter into contracts with government to provide social services programs.

II. Background

The “Charitable Choice” provision of this federal legislation, allows states to utilize charitable and FBOs in serving the needy and poor. It allows FBOs to expand their involvement in the welfare reform effort while providing for specific protections for them, clients and the governmental entity.

Charitable Choice affirms that states which contract with private organizations for the provision of social services paid for in whole or in part with Temporary Assistance *for* Needy Families (TANF) funds may not discriminate against or exclude FBOs from participation. It also secures the religious autonomy and integrity of FBOs that contract to provide these services.

FBOs are neither to be given favorable nor unfavorable treatment by governmental entities. They are to be treated on the same basis as any other non-governmental provider without impairing the religious character of the organizations and without diminishing the religious freedom of recipients of assistance.

A wide range of assistance services may be offered by religious providers, including: job search, job readiness, and job-skills training programs; nutrition and food budgeting advice; GED and ESL programs; second chance or maternity homes for expectant unwed minors who cannot live with their own parents; abstinence education; drug treatment services; ***health clinics, and; substance abuse prevention education and counseling. Drug treatment services can only be provided by New York State Office of Alcoholism and Substance Abuse Services (OASAS) licensed treatment programs.***

Many states that have entered into agreements with charitable and FBOs to work with the poor and less fortunate have achieved excellent results. These organizations have proven to administer their programs with dispatch, compassion, dignity and hope.

III. Definitions

FBOs are religious organizations or religiously affiliated not-for-profit entities.

IV. Program Implications

If a social services district or State agency uses TANF funds to contract with any nongovernmental social service provider or issues vouchers or certificates that are redeemable for services with such providers, the district or agency must comply with the Charitable Choice requirement not to discriminate against faith-based providers; i.e., religious organizations must be permitted the opportunity to enter into contracts or accept vouchers or certificates for services on the same basis as any other nongovernmental provider, without impairing the religious character of the organization.

The provision applies when State agencies or local districts issue Requests for Proposals (RFPs) or enter into purchase-of-service contracts, grants, certificates or other legal arrangements with nongovernmental vendors.

V. Right of Recipients

Recipients cannot be required to participate in religious activities in order to receive services.

The services provided with contract funds or grants may not consist of sectarian worship, instruction or proselytization.

If an eligible individual objects to the religious character of the FBO from which he receives or would *receive* assistance or services, he or she must be provided with services of comparable value from another provider within a reasonable period of time.

VI. Rights of FBOs

FBOs cannot be required to alter their religious character in order to provide services or assistance. They are permitted to retain their independence from governmental control, including all matters pertaining to the definition, development, practice and expression of its religious beliefs. They may not be required to alter their form of internal governance or to remove religious art, icons, scripture or other symbols.

VII. Employment Discrimination

FBOs are exempt from the prohibitions in Title VII of the Civil Rights Act against discrimination on the basis of religion, and this exemption covers employees performing secular as well as religious functions. The Charitable Choice statute states that the exemption applies regardless of participation in or receipt of TANF funds.

FBOs remain subject to prohibitions under Title VII of the Civil Rights Act against discrimination on the basis of race, sex, color and national origin. Also, Title VI of the Civil Rights Act separately prohibits discrimination with respect to federally funded activities on the basis of race, color or national origin.

VIII. Responsibilities of FBOs

FBOs may not discriminate against individuals with respect to assistance or services on the basis of religion, religious belief or refusal to actively participate in a religious practice.

FBOs are subject to the same fiscal accountability as other organizations when providing governmental services. They must account for their use of governmental funds in accordance with generally accepted auditing principles. However, if they segregate their accounts, only those accounts using governmental funds are subject to audit.

FBOs may not require recipients to participate in religious activities in order to receive services.

FBOs may not use contract funds or grants to pay for sectarian worship, instruction or proselytization.

IX. Social Services District and State Agency Responsibilities

The social services district or State agency must ensure that an alternate comparable non-religious service provider is available to recipients who object to receipt of services from a faith-based provider. Furthermore, the locality must ensure that potential recipients are aware of the religious or non-religious character of each provider, of the choices available to them and of their right to an alternative should they object to the religious character of a provider.

RFPs for TANF services to be provided by private organizations must provide equal opportunities to secular organizations and FBOs. Such RFPs should never be restricted to either secular organizations or to FBOs.

X. Additional Information

For additional information, technical assistance, workshops/conferences and outreach help, you may contact Rev. Norman Macklin, OTDA Commissioner's Office, at (518) 474-9510 or OCFS, Ministerial Services, Rev. Leonard Comithier at (518) 474-9400.

XI. Attachments

The full text of Section 104 is attached.

XII. Other Action

OTDA is establishing a statewide faith-based county liaison network to assist with the Charitable Choice initiative as well as oversight for implementation and compliance. Each county department of social services is requested to designate a social services staff person and to secure a volunteer from the faith-based community to serve as an ombudsman to provide feedback, reports, information, suggestions and assistance to the local department, FBOs and this agency in implementing the federal mandate. Please contact Norman Macklin at the number previously cited or by email at norman.macklin@dfa.state.ny.us. by ***June 21, 2002***.

OCFS has established a statewide network of OCFS staff to serve as liaisons and/or resource people to Faith-Based Organizations in their respective area of the state. If you need the name or telephone number of the OCFS resource person in your area, please contact Leonard Comithier at the telephone previously mentioned or via email KK7342@dfa.state.ny.us.

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SEC. 104. SERVICES PROVIDED BY CHARITABLE, RELIGIOUS, OR PRIVATE ORGANIZATIONS.

(a) IN GENERAL. –

(1) STATE OPTIONS. – A State may –

(A) administer and provide services under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) through contracts with charitable, religious, or private organizations; and

(B) provide beneficiaries of assistance under the programs described in subparagraphs (A) and (B)(ii) of paragraph (2) with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.

(2) PROGRAMS DESCRIBED. – The programs described in this paragraph are the following programs:

(A) A State program funded under part A of title W of the Social Security Act (as amended by section 103(a) of this Act).

(B) Any other program established or modified under title I or II of this Act, that –

(i) permits contracts with organizations; or

(ii) permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance.

(b) RELIGIOUS ORGANIZATIONS. – The purpose of this section is to allow States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in subsection (a)(2), on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(c) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS. – In the event a State exercises its authority under subsection (a), religious organizations are eligible, on the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in subsection (a)(2) so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in subsection (k), neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

(d) RELIGIOUS CHARACTER AND FREEDOM. –

(1) RELIGIOUS ORGANIZATIONS. – A religious organization with a contract described in subsection (a)(1)(A), or which accepts certificates, vouchers, or other forms of disbursement under subsection (a)(1)(B), shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) **ADDITIONAL SAFEGUARDS.** – Neither the Federal Government nor a State shall require a religious organization to –

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols;

in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a program described in subsection (a)(2).

(e) **RIGHTS OF BENEFICIARIES OF ASSISTANCE.** –

(1) **IN GENERAL.** – If an individual described in paragraph

(2) has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2), the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of assistance which the individual would have received from such organization.

(2) **INDIVIDUAL DESCRIBED.** – An individual described in this paragraph is an individual who receives, applies for, or requests to apply for, assistance under a program described in subsection (a)(2).

(f) **EMPLOYMENT PRACTICES** – A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C.2000e-1a) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a)(2).

(g) **NONDISCRIMINATION AGAINST BENEFICIARIES.** – Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in subsection (a)(2) on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

(h) **FISCAL ACCOUNTABILITY.** –

(1) **IN GENERAL.** – Except as provided in paragraph (2), any religious organization contracting to provide assistance funded under any program described in subsection (a)(2) shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(2) **LIMITED AUDIT.** – If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.

(i) **COMPLIANCE.** – Any party which seeks to enforce its rights under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

(j) **LIMITATIONS TO USE OF FUNDS FOR CERTAIN PURPOSES.** – No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(1)(A) shall be expended for sectarian worship, instruction, or proselytization.

(k) PREEMPTION. – Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.