

## **Q & A on "Charitable Choice" in Welfare Reform (Section 104 of P.L. 104-193)**

### **What is the "charitable choice" provision?**

Non-governmental charities and churches have been transforming shattered lives for generations by addressing the deeper needs of people and instilling hope and values which help change behavior and attitudes. The charitable choice provision will provide greater opportunities for these organizations to help fight poverty.

Section 104 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) gives states specific options to provide welfare-related services to the poor through contracts with charitable, religious, or private organizations; and to provide beneficiaries of assistance with vouchers which are redeemable with such organizations.

In particular, Section 104 provides specific language regarding the participation of religious organizations in delivering welfare services. In the past, many faith-based organizations have not participated in government programs for fear of having to compromise their religious integrity. Also, program managers may have misapprehended constitutional law and may have wrongly excluded religious organizations from the mix of private providers for fear of violating the establishment clause of the Constitution. Some may have gone too far in regulating what religious organizations must do to receive government funds.

### **How does the charitable choice provision work?**

Charitable choice allows-but does not require-states to contract with charitable, religious, or private organizations, or to create voucher systems, to deliver welfare services within the states. States must consider religious organizations on an equal, nondiscriminatory basis with other groups when deciding to contract with private institutions.

### **To what programs will charitable choice apply?**

The charitable choice provision applies to funds under the new Temporary Assistance for Needy Families program, which replaces AFDC, and the Supplemental Security Income program in cases where the law allows for contracts or voucher programs with the private sector.

Charitable choice may also apply to certain aspects of the food stamp and Medicaid programs, if those laws allow for contracts or vouchers with the private sector.

### **What types of services could faith-based organizations provide under charitable choice?**

The new TANF program involves more than just handing out checks. Rather, the program's work requirements and limitation on benefits are suited to the involvement of non-governmental, charitable organizations that are successful in moving people from dependence to self-reliance. Under charitable choice, states could contract or develop a voucher system with non-governmental institutions to provide welfare services in a variety of settings.

**Work:** In administering the work requirements, states could involve faith-based organizations in the provision of subsidized jobs, on-the-job training, job search and job readiness assistance, community service positions, vocational educational training, job skill training, and GED programs.

**Food:** Church/synagogue soup kitchens could provide meals or run food pantries.

**Maternity homes:** For unmarried minor mothers and expectant mothers who cannot remain with their parents, states may want to place these minors in voluntary-sector maternity homes, adult-supervised residential care, second-chance homes, or other suitable living quarters.

**Medical and health services:** Faith-based groups could provide abstinence education and drug counseling/treatment, or operate health clinics.

### **What rights do faith-based organizations have under charitable choice?**

**Nondiscrimination:** If a state chooses to involve the independent sector in providing services, it may not discriminate on account of a provider's religious character. An organization has a private civil cause of action for injunctive relief if it believes that its rights have been violated. State courts have exclusive jurisdiction over any such case.

**Independence:** An organization shall retain its independence from Federal, State, and local governments, including the organization's control over the definition, development, practice, and expression of its religious beliefs.

The organization is not required to alter its form of internal governance. For example, a state could not require that the organization's governing board reflect the ethnic and cultural diversity of the local community. The organization also cannot be required to remove religious art, icons, scripture, or other symbols from its premises.

**Employment practices:** Faith-based providers may discriminate on a religious basis in the terms and conditions established for their employees. Involvement as a provider of social services does not act as a waiver of the provider's Title VII exemption.

Faith-based providers are not relieved of any other non-discrimination responsibilities. State and local human rights laws and Federal civil rights laws that are triggered by the receipt of federal financial assistance are unaffected.

### **What rights do beneficiaries have under charitable choice?**

**Nondiscrimination:** Faith-based providers may not discriminate against a beneficiary on the basis of religion, a religious belief, or a refusal to actively participate in a religious practice. For example, a Catholic organization may not deny services to a beneficiary of a Protestant faith. A beneficiary does not have to participate in saying grace at a meal, but s/he cannot force the religious organization to refrain from having grace.

**Alternative services:** Any beneficiary who objects to receiving services from a faith-based organization has a right to demand that the state provide them with services from any alternative (non-religious) provider. A beneficiary has a private civil cause of action for injunctive relief if s/he believes that her/his rights have been violated. State courts have exclusive jurisdiction over any such case.