

(18) The State will comply with the requirements of 42 CFR part 54.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 260

RIN 0970-AC12

Charitable Choice Provisions Applicable to the Temporary Assistance for Needy Families Program

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule implements the Charitable Choice statutory provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as amended. The statutory and regulatory provisions apply to the Temporary Assistance for Needy Families (TANF) program administered by ACF. The statute and final rule establish requirements for State and local governments that administer or provide TANF services and benefits through contracts or through certificates, vouchers, or other forms of disbursement. The requirements and protections also apply to organizations, including faith-based organizations, that provide services and benefits with TANF funds and to the beneficiaries of those services.

The TANF Charitable Choice provisions of PRWORA were enacted to ensure that low-income families receive effective needed services, including services provided by faith-based organizations. In creating a Faith-Based and Community Initiative, President Bush has said: “* * * when we see social needs in America, my administration will look first to faith-based programs and community groups, which have proven their power to save and change lives. We will not fund the religious activities of any group. But when people of faith provide social services, we will not discriminate against them.” To carry out that commitment and to implement the statute, the final rules clarify the protections for beneficiaries of services, the rights and obligations of religious organizations that provide TANF-funded services, and the requirements

and limitations of State and local governments.

EFFECTIVE DATE: October 30, 2003.

FOR FURTHER INFORMATION CONTACT:

April Kaplan, Deputy Director, Office of Family Assistance, ACF, at (202) 401-5138. Deaf or hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

On December 17, 2002, ACF published a Notice of Proposed Rulemaking (NPRM) to implement the “Charitable Choice” statutory provisions of section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104-193). 67 FR 77362 (2002). We provided a 60-day comment period that ended on February 18, 2003. We offered the public the opportunity to submit comments by surface mail, E-mail, or electronically via our Web site.

Comment Overview

After accounting for duplications, we received 38 comments on the NPRM. We heard from faith-based groups and associations, State welfare agencies and social services departments, national associations, advocacy groups, other State-level organizations, and the general public. Most commenters addressed all aspects of the statutory and regulatory framework and offered extensive suggestions. Some comments were generally positive, supportive of specific provisions and appreciative of our attempt to clarify the statutory requirements. In general, many commenters had mixed views on both the statutory provisions and proposed regulatory policies (where we had exercised regulatory discretion), supporting some provisions and opposing others. We have summarized the public comments and our response to them throughout sections I through XIII of the preamble of this final rule.

Table of Contents

- I. The Charitable Choice Statutory Framework
- II. Regulatory Authority
- III. Constitutional Issues—Establishment and Free Exercise Clauses
- IV. Equal Treatment for Religious Organizations
- V. Restrictions on Inherently Religious Activities by Organizations that Receive Direct TANF Funding
- VI. Religious Character and Independence of Religious Organizations
- VII. Employment Practices
- VIII. Nondiscrimination Against Beneficiaries
- IX. Notice, Referral, and Provision of Services from Alternative Providers
- X. Fiscal Accountability
- XI. Effect on State and Local Funds

XII. Treatment of Intermediate Organizations

XIII. Regulatory Analyses

- Paperwork Reduction Act of 1995
- Regulatory Flexibility Analysis
- Regulatory Impact Analysis
- Unfunded Mandates Reform Act of 1995
- Congressional Review
- Assessment of Federal Regulation and Policies on Families
- Executive Order 13132

XIV. Final Rule

I. Charitable Choice Statutory Framework

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104-193) sets forth certain “Charitable Choice” provisions in section 104, entitled “Services Provided By Charitable, Religious, or Private Organizations.” This section clarifies State authority to administer and provide TANF services through contracts with charitable, religious, or private organizations and to provide beneficiaries with certificates, vouchers, or other forms of disbursement, which are redeemable with such organizations. The provisions of section 104 are hereinafter referred to as “TANF Charitable Choice provisions.” In addition to giving States the ability to contract with a range of service providers and use optimal funding mechanisms, and giving families a greater choice of TANF-funded providers, section 104 sets forth certain requirements to ensure that religious organizations are able to compete on an equal footing for funds under the TANF program, without impairing the religious character of such organizations or diminishing the religious freedom of TANF beneficiaries.

President Bush has made it one of his Administration’s top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration’s view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, non-profit organizations, and neighborhood groups, offer a myriad of social services to those in need. The TANF Charitable Choice provisions are consistent with the Administration’s belief that there should be an equal opportunity for all organizations—both faith-based and non-religious—to participate as partners in Federal programs to serve Americans in need.

This final rule implements the TANF Charitable Choice provisions applicable to State and local governments and to religious organizations in their use of