

106TH CONGRESS
1ST SESSION

S. 289

To amend the Public Health Service Act to permit faith-based substance abuse treatment centers to receive Federal assistance, to permit individuals receiving Federal drug treatment assistance to select private and religiously oriented treatment, and to protect the rights of individuals from being required to receive religiously oriented treatment.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1999

Mr. ABRAHAM (for himself, Mr. COVERDELL, Mr. HUTCHINSON, and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act to permit faith-based substance abuse treatment centers to receive Federal assistance, to permit individuals receiving Federal drug treatment assistance to select private and religiously oriented treatment, and to protect the rights of individuals from being required to receive religiously oriented treatment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

2 This Act may be cited as the “Faith-Based Drug
3 Treatment Enhancement Act”.

Title V of the Public Health Service Act (42 U.S.C.
290aa et seq.) is amended by adding at the end the follow-
ing:

12 **“SEC. 581. APPLICABILITY TO DESIGNATED PROGRAMS.**

1 “(1) DESIGNATED AWARD RECIPIENT.—The
2 term ‘designated award recipient’ means a public or
3 private entity that has received an award under a
4 designated program (whether the award is a des-
5 ignated direct award or a designated subaward).

6 “(2) DESIGNATED DIRECT AWARD.—The term
7 ‘designated direct award’ means an award under a
8 designated program that is received directly from
9 the Federal Government.

10 “(3) DESIGNATED SUBAWARD.—The term ‘des-
11 ignated subaward’ means an award of financial as-
12 sistance made by a non-Federal entity, which award
13 consists in whole or in part of Federal financial as-
14 sistance provided through an award under a des-
15 ignated program.

16 “(4) DESIGNATED PROGRAM.—The term ‘des-
17 ignated program’ has the meaning given such term
18 in subsection (a).

19 “(5) FINANCIAL ASSISTANCE.—The term ‘fi-
20 nancial assistance’ means a grant, cooperative agree-
21 ment, contract, or voucherized assistance.

22 “(6) PROGRAM BENEFICIARY.—The term ‘pro-
23 gram beneficiary’ means an individual who receives
24 program services.

1 “(7) PROGRAM PARTICIPANT.—The term ‘pro-
 2 gram participant’ has the meaning given such term
 3 in section 582(a)(2).

4 “(8) PROGRAM SERVICES.—The term ‘program
 5 services’ means treatment for substance abuse, or
 6 preventive services regarding such abuse, provided
 7 pursuant to an award under a designated program.

8 “(9) RELIGIOUS ORGANIZATION.—The term ‘re-
 9 ligious organization’ means a nonprofit religious or-
 10 ganization.

11 “(10) VOUCHERIZED ASSISTANCE.—The term
 12 ‘voucherized assistance’ means—

13 “(A) a system of selecting and reimbursing
 14 program services in which—

15 “(i) the beneficiary is given a docu-
 16 ment or other authorization that may be
 17 used to pay for program services;

18 “(ii) the beneficiary chooses the orga-
 19 nization that will provide services to him or
 20 her according to rules specified by the des-
 21 ignated award recipient; and

22 “(iii) the organization selected by the
 23 beneficiary is reimbursed by the designated
 24 award recipient for program services pro-
 25 vided; or

1 “(B) any other mode of financial assist-
 2 ance to pay for program services in which the
 3 program beneficiary determines the allocation
 4 of program funds through his or her selection
 5 of one service provider from among alternatives.

6 **“SEC. 582. RELIGIOUS ORGANIZATIONS AS PROGRAM PAR-**
 7 **TICIPANTS.**

8 “(a) IN GENERAL.—

9 “(1) SCOPE OF AUTHORITY.—Notwithstanding
 10 any other provision of law, a religious
 11 organization—

12 “(A) may be a designated award recipient;

13 “(B) may make designated subawards to
 14 other public or nonprofit private entities (in-
 15 cluding other religious organizations);

16 “(C) may provide for the provision of pro-
 17 gram services to program beneficiaries through
 18 the use of voucherized assistance; and

19 “(D) may be a provider of services under
 20 a designated program, including a provider that
 21 accepts voucherized assistance.

22 “(2) DEFINITION OF PROGRAM PARTICIPANT.—

23 For purposes of this part, the term ‘program partici-
 24 pant’ means a public or private entity that has re-
 25 ceived a designated direct award, or a designated

1 subaward, regardless of whether the entity provides
 2 program services. Such term includes an entity
 3 whose only participation in a designated program is
 4 to provide program services pursuant to the accept-
 5 ance of voucherized assistance.

6 “(b) RELIGIOUS ORGANIZATIONS.—The purpose of
 7 this section is to allow religious organizations to be pro-
 8 gram participants on the same basis as any other non-
 9 profit private provider without impairing the religious
 10 character of such organizations, and without diminishing
 11 the religious freedom of program beneficiaries.

12 “(c) NONDISCRIMINATION AGAINST RELIGIOUS OR-
 13 GANIZATIONS.—

14 “(1) FINDINGS.—The Congress finds that the
 15 establishment clause of the first amendment to the
 16 Constitution of the United States does not require
 17 that—

18 “(A) social-welfare programs discriminate
 19 against faith-based providers of services; or

20 “(B) faith-based providers of services, as a
 21 prerequisite to participation in Federal pro-
 22 grams, abandon their religious character and
 23 censor their religious expression.

24 “(2) NONDISCRIMINATION.—Religious organiza-
 25 tions are eligible to be program participants on the

1 same basis as any other nonprofit private organiza-
 2 tion. Neither the Federal Government nor a State
 3 receiving funds under such programs shall discrimi-
 4 nate against an organization that is or applies to be
 5 a program participant on the basis that the organi-
 6 zation has a religious character.

7 “(d) RELIGIOUS CHARACTER AND FREEDOM.—

8 “(1) RELIGIOUS ORGANIZATIONS.—Except as
 9 provided in this section, any religious organization
 10 that is a program participant shall retain its inde-
 11 pendence from Federal, State, and local government,
 12 including such organization’s control over the defini-
 13 tion, development, practice, and expression of its re-
 14 ligious beliefs.

15 “(2) ADDITIONAL SAFEGUARDS.—Neither the
 16 Federal Government nor a State shall require a reli-
 17 gious organization to—

18 “(A) alter its form of internal governance;

19 or

20 “(B) remove religious art, icons, scripture,

21 or other symbols;

22 in order to be a program participant.

23 “(e) NONDISCRIMINATION IN EMPLOYMENT.—

24 “(1) IN GENERAL.—Except as provided in para-
 25 graph (2), nothing in this section shall be construed

1 to modify or affect the provisions of any other Fed-
 2 eral or State law or regulation that relates to dis-
 3 crimination in employment on the basis of religion.

4 “(2) EXCEPTION.—A religious organization
 5 that is a program participant may require that an
 6 employee rendering program services adhere to—

7 “(A) the religious beliefs and practices of
 8 such organization; and

9 “(B) any rules of the organization regard-
 10 ing the use of drugs or alcohol.

11 “(f) RIGHTS OF PROGRAM BENEFICIARIES.—

12 “(1) OBJECTIONS REGARDING RELIGIOUS OR-
 13 GANIZATIONS.—With respect to an individual who is
 14 a program beneficiary or a prospective program ben-
 15 eficiary, if the individual objects to a program par-
 16 ticipant on the basis that the participant is a reli-
 17 gious organization, the following applies:

18 “(A) If the organization received a des-
 19 ignated direct award, the organization shall ar-
 20 range for the individual to receive program
 21 services through an alternative entity.

22 “(B) If the organization received a des-
 23 ignated subaward, the non-Federal entity that
 24 made the subaward shall arrange for the indi-

vidual to receive the program services through
an alternative program participant.

“(C) If the organization is providing services pursuant to voucherized assistance, the designated award recipient that operates the voucherized assistance program shall arrange for the individual to receive the program services through an alternative provider.

“(D) Arrangements under any of subparagraphs (A) through (C) with an alternative entity shall provide for program services the monetary value of which is not less than the monetary value of the program services that the individual would have received from the religious organization involved.

“(2) NONDISCRIMINATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B) or as otherwise provided in law, a religious organization that is a program participant shall not in providing program services discriminate against a program beneficiary on the basis of religion or religious belief.

“(B) LIMITATION.—A religious organization that is a program participant may require a program beneficiary who has elected in ac-

1 cordance with paragraph (1) to receive program
 2 services from such organization—

3 “(i) to actively participate in religious
 4 practice, worship, and instruction; and

5 “(ii) to follow rules of behavior de-
 6 vised by the organizations that are reli-
 7 gious in content or origin.

8 “(g) FISCAL ACCOUNTABILITY.—

9 “(1) IN GENERAL.—Except as provided in para-
 10 graph (2), any religious organization that is a pro-
 11 gram participant shall be subject to the same regula-
 12 tions as other recipients of awards of Federal finan-
 13 cial assistance to account, in accordance with gen-
 14 erally accepted auditing principles, for the use of the
 15 funds provided under such awards.

16 “(2) LIMITED AUDIT.—With respect to the
 17 award involved, if a religious organization that is a
 18 program participant maintains the Federal funds in
 19 a separate account from non-Federal funds, then
 20 only the Federal funds shall be subject to audit.

21 “(h) COMPLIANCE.—With respect to compliance with
 22 this section by an agency, a religious organization may
 23 obtain judicial review of agency action in accordance with
 24 chapter 7 of title 5, United States Code.

1 **“SEC. 583. LIMITATIONS ON USE OF FUNDS FOR CERTAIN**
2 **PURPOSES.**

3 “(a) IN GENERAL.—Except as provided in subsection
4 (b), no funds provided directly to an entity under a des-
5 ignated program shall be expended for sectarian worship
6 or instruction.

7 “(b) EXCEPTION.—Subsection (a) shall not apply to
8 assistance provided to or on behalf of a program bene-
9 ficiary if the beneficiary may choose where such assistance
10 is redeemed or allocated.

11 **“SEC. 584. ADMINISTRATION OF PROGRAM AND TREAT-**
12 **MENT OF FUNDS.**

13 “(a) FUNDS NOT AID TO INSTITUTIONS.—Financial
14 assistance under a designated program provided to or on
15 behalf of program beneficiaries is aid to the beneficiary,
16 not to the organization providing program services. The
17 receipt by a program beneficiary of program services at
18 the facilities of the organization shall not constitute Fed-
19 eral financial assistance to the organization involved.

20 “(b) PROHIBITION ON STATE DISCRIMINATION IN
21 USE OF FUNDS.—No provision in any State constitution
22 or State law shall be construed to prohibit the expenditure
23 of Federal funds under a designated program in a reli-
24 gious facility or by a religious organization that is a pro-
25 gram participant. If a State law or constitution would pre-
26 vent the expenditure of State or local public funds in such

1 a facility or by such an organization, then the State or
 2 local government shall segregate the Federal funds from
 3 State or other public funds for purposes of carrying out
 4 the designated program.

5 **“SEC. 585. EDUCATIONAL REQUIREMENTS FOR PERSONNEL**
 6 **IN DRUG TREATMENT PROGRAMS.**

7 “(a) FINDINGS.—The Congress finds that—

8 “(1) establishing formal educational qualifica-
 9 tion for counselors and other personnel in drug
 10 treatment programs may undermine the effective-
 11 ness of such programs; and

12 “(2) such formal educational requirements for
 13 counselors and other personnel may hinder or pre-
 14 vent the provision of needed drug treatment services.

15 “(b) LIMITATION ON EDUCATIONAL REQUIREMENTS
 16 OF PERSONNEL.—

17 “(1) TREATMENT OF RELIGIOUS EDUCATION.—

18 If any State or local government that is a program
 19 participant imposes formal educational qualifications
 20 on providers of program services, including religious
 21 organizations, such State or local government shall
 22 treat religious education and training of personnel
 23 as having a critical and positive role in the delivery
 24 of program services. In applying educational quali-
 25 fications for personnel in religious organizations,

1 such State or local government shall give credit for
 2 religious education and training equivalent to credit
 3 given for secular course work in drug treatment or
 4 any other secular subject that is of similar grade
 5 level and duration.

6 “(2) RESTRICTION OF DISCRIMINATION RE-
 7 QUIREMENTS.—

8 “(A) IN GENERAL.—Subject to paragraph
 9 (1), a State or local government that is a pro-
 10 gram participant may establish formal edu-
 11 cational qualifications for personnel in organiza-
 12 tions providing program services that contribute
 13 to success in reducing drug use among program
 14 beneficiaries.

15 “(B) EXCEPTION.—The Secretary shall
 16 waive the application of any educational quali-
 17 fication imposed under subparagraph (A) for an
 18 individual religious organization, if the Sec-
 19 retary determines that—

20 “(i) the religious organization has a
 21 record of prior successful drug treatment
 22 for at least the preceding 3 years;

23 “(ii) the educational qualifications
 24 have effectively barred such religious orga-

1 nization from becoming a program pro-
2 vider;

3 “(iii) the organization has applied to
4 the Secretary to waive the qualifications;
5 and

6 “(iv) the State or local government
7 has failed to demonstrate empirically that
8 the educational qualifications in question
9 are necessary to the successful operation of
10 a drug treatment program.”.

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