

July 2001

CHARITABLE CHOICE - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4034, a copy of which is attached as Appendix A, provides for a Legislative Council study of the issues and concerns of implementing Charitable Choice, the privatization of federally funded welfare services through faith-based organizations.

CHARITABLE CHOICE

Charitable Choice is the privatization of federally funded welfare services through faith-based organizations. Charitable Choice provisions were first included in the federal welfare reform measure, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This law authorized a state to administer and provide temporary assistance for needy families (TANF) services or benefits through contracts with nongovernmental entities or to provide TANF recipients with certificates or vouchers redeemable with private entities. The law allowed states to contract with religious organizations to provide federally funded services under specifically named programs on the same basis as any other nongovernmental provider without impairing the religious character of the organizations or the religious freedom of recipients. Charitable Choice does not contain new funding for faith-based organizations and it only applies to programs designated by Congress. In addition to the TANF program, other federal programs authorizing Charitable Choice include the child care and development block grant which specifies that religious organizations are eligible to participate, programs available under the community services block grant enacted in 1998, and substance abuse treatment and prevention services programs under Titles 5 and 19 of the Public Health Services Act enacted in 2000.

Under Charitable Choice rules, the government may not discriminate against an organization that applies to provide services on the basis of its religious character and may not require it to remove religious art or other symbols as a condition of participation. In addition, Charitable Choice specifies that religious organizations retain control over the definition, development, practice, and expression of their religious beliefs. The rules contemplate that religious organizations will employ their faiths in publicly funded programs using their own resources. A religious organization's use of public funds is subject to audit, but if the federal funds are segregated into separate accounts, only these accounts are subject to audit.

Charitable Choice rules also require that a religious organization cannot discriminate against a beneficiary or potential beneficiary on the basis of religion or religious belief and that if a recipient does object to the religious character of the provider, the government must provide an alternate and accessible provider.

A number of religiously affiliated or religiously sponsored organizations at the national, state, and local levels have participated in publicly funded social services programs including Catholic Family Services and Lutheran Social Services.

Concerns of the Charitable Choice provisions relate to the interpretations and applications of the establishment of religion clause of the First Amendment which has generally been interpreted by the Supreme Court to prohibit government from sponsoring or financing religious instruction or indoctrination. Generally, programs operated by religious organizations that receive public funding in the form of grants or contracts must essentially be secular in nature. Charitable Choice attempts to move beyond these restrictions and allow faith-based organizations to participate in publicly funded social services programs while retaining their religious character.

President Bush has recommended expanding Charitable Choice by further involving faith-based organizations in the provision of government-funded services. His proposal includes the following initiatives:

1. A commitment to fully implement the Charitable Choice measures that have been enacted into law.
2. The establishment of private programs incorporating Charitable Choice to assist children and families of prisoners, to improve inmate rehabilitation prior to release, to establish maternity group homes, and to provide afterschool programs for low-income children.
3. The creation of an office of faith-based and community initiatives in the White House to enhance and promote government's partnership with faith-based and community organizations.
4. The establishment of a center for faith-based and community initiatives in each of five federal agencies--the Departments of Health and Human Services, Housing and Urban Development, Labor, Justice, and Education.
5. Encourage and assist states to create their own versions of the White House office of faith-based and community initiatives.

6. The expansion of incentives for private giving to religious and charitable organizations.

Legislation has been introduced in the 107th Congress relating to Charitable Choice, including the Community Solutions Act in the House (H.R.7) and the Savings Opportunity and Charitable Giving Act of 2001 (S.592) in the Senate. A comparison of the provisions of these two acts and the President's initiatives is attached as Appendix B.

PREVIOUS STUDIES

The 1999-2000 Budget Committee on Human Services studied, pursuant to Section 28 of 1999 Senate Bill No. 2012, the services provided by the Department of Human Services regional human service centers, including the appropriateness and justification for continuing human service center programs, the costs and benefits of human service programs, methods for evaluating the effectiveness and outcomes of human service center programs, and the need to establish priorities relating to human service center programs. The committee reviewed the services and funding provided to each of the human service centers, caseloads, administrative costs, and methods used by the human service centers to evaluate their programs. The committee made no recommendations regarding its study.

STUDY PLAN

The committee may wish to proceed with this study as follows:

1. Receive information from the Department of Human Services regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.
2. Receive information from the State Department of Health regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.
3. Receive information from the Department of Corrections and Rehabilitation regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.
4. Monitor federal legislation and the President's initiatives relating to Charitable Choice.
5. Review other states' Charitable Choice initiatives.
6. Receive testimony from representatives of faith-based organizations regarding their interest in providing services and the types of services that may be provided.
7. Receive testimony from other interested persons regarding Charitable Choice.
8. Develop committee recommendations and prepare any legislation necessary to implement the recommendations.
9. Prepare a final report for submission to the Legislative Council.

ATTACH:2