

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.

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## 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

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## 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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. PREVENTION AND TREATMENT OF SUBSTANCE**  
5 **ABUSE; SERVICES PROVIDED THROUGH RELI-**  
6 **GIOUS ORGANIZATIONS.**

7 Title V of the Public Health Service Act (42 U.S.C.  
8 290aa et seq.) is amended by adding at the end the follow-  
9 ing:

10 “PART G—SERVICES PROVIDED THROUGH RELIGIOUS  
11 ORGANIZATIONS

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

13 “(a) DESIGNATED PROGRAMS.—Subject to sub-  
14 section (b), this part applies to each program under this  
15 Act that makes awards of Federal financial assistance to  
16 public or private entities for the purpose of carrying out  
17 activities to prevent or treat substance abuse (in this part  
18 referred to as a ‘designated program’). Designated pro-  
19 grams include the program under subpart II of part B  
20 of title XIX (relating to formula grants to the States).

21 “(b) LIMITATION.—This part does not apply to any  
22 award of Federal financial assistance under a designated  
23 program for a purpose other than the purpose specified  
24 in subsection (a).

25 “(c) DEFINITIONS.—For purposes of this part (and  
26 subject to subsection (b)):

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 efitary, 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 igned 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 igned subaward, the non-Federal entity that  
24 made the subaward shall arrange for the indi-

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

3           “(C) If the organization is providing serv-  
4           ices pursuant to voucherized assistance, the  
5           designated award recipient that operates the  
6           voucherized assistance program shall arrange  
7           for the individual to receive the program serv-  
8           ices through an alternative provider.

9           “(D) Arrangements under any of subpara-  
10          graphs (A) through (C) with an alternative en-  
11          tity shall provide for program services the mon-  
12          etary value of which is not less than the mone-  
13          tary value of the program services that the indi-  
14          vidual would have received from the religious  
15          organization involved.

16          “(2) NONDISCRIMINATION.—

17                 “(A) IN GENERAL.—Except as provided in  
18                 subparagraph (B) or as otherwise provided in  
19                 law, a religious organization that is a program  
20                 participant shall not in providing program serv-  
21                 ices discriminate against a program beneficiary  
22                 on the basis of religion or religious belief.

23                 “(B) LIMITATION.—A religious organiza-  
24                 tion that is a program participant may require  
25                 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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