

THE PROVIDER

A NEWSLETTER OF THE MASSACHUSETTS COUNCIL OF HUMAN SERVICE PROVIDERS, INC. / OCTOBER 15, 1978

Politics and Providers

POLITICAL ACTIVITIES ON THE PART OF ORGANIZATIONS EXEMPT FROM TAX UNDER §501(c)(3) OF THE INTERNAL REVENUE CODE

This article is the first in a planned series of articles on legal issues of interest to providers. It is designed for general informational purposes. A provider having particular questions should consult with its attorney.

Section 501(c)(3) of the Internal Revenue Code (the "Code") exempts from tax "[c]orporations...organized and operated exclusively for...charitable...purposes...which (do)...not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Applicable Treasury regulations provide that an organization otherwise qualified for exemption under §501(c)(3) will be denied exemption if it has objectives or engages in actions which characterize it as an "action" organization. §1.501(c)(3)-1(b)(3)(iii). Later regulations provide:

An organization is an 'action' organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term 'candidate for public office' means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate. §1.501(c)(3)-1(c)(3)(iii).

The breadth of the foregoing language evidences an intent on the part of Congress and the Internal Revenue Service (the "Service") to proscribe all political activities.

An Exception

The Service does, however, recognize a distinction between political activity and permissible "voter education." To clarify this distinction, it has issued Revenue Ruling 78-248 (June, 1978) which contains examples of permissible and impermissible

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An Interview With EOHS Secretary

We originally intended to interview Secretary Gordon Chase...The following interview between Doug Baird (MCHSP) and Secretary Mitchell took place five days after she assumed office.

BAIRD: Providers read of the appointment of Secretary Chase, the departure of Secretary Chase and your appointment. They also read of the Governor's defeat. Understandably, there is a growing concern about what is going to happen to human services. What are your goals as Secretary of Human Services until January, 1979?

MITCHELL: Providers have anxieties, we have depression along with the anxiety; and there should be. I don't know what is going to happen, nor does anybody. But I can certainly be sympathetic to the feeling of anxiety, the concern about what is going to happen.

Maybe I ought to take the opportunity here to clarify what I think is an unfair criticism that I have heard occasionally about Gordon Chase. I was concerned and disturbed when I heard it for the first time a couple of days ago. There is some criticism that things were going bad for him and that he abandoned Human Services. I think it is totally unjustified. The guy made a decision to take chances with the Governor that he'd be re-elected, based on the same promising evidence that everybody else believed. It was as much as a shock to us as it was to him. The timing of the primary was such that he was, thank God, able to retrace his steps and re-establish his academic career. I for one, and I know the Governor for two, not only supported Gordon in his decision to leave but would have been very displeased if he had not been able to do that.

How am I going to treat these next months? I'm going to try to complete the budget process because of the statutory responsibility. I'm not going to do it with a view in mind toward anything other than trying to put in as responsible a budget as I can. I have asked all the Commissioners to provide me with a list of those things which they think we can complete or at least take some stages in completion. This is part of the job--not to leave so much undone that the next person has to retrace a lot of steps. So that is another priority. For example,

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Negotiating Committee Update

This month's meeting was the first chaired by Chuck Atkins, Undersecretary of Human Services. Since payment problems had been severe in recent weeks, the regular agenda of subcommittee reports were tabled. Other ongoing work will be reviewed at the next meeting. The entire meeting was devoted to issues involving both the regular and timely payments systems.

Chuck began by noting that EOHS is not resigned to backlogs in payments at this time each year and will not tolerate continued delays. He also reported that Secretary Mitchell's first meeting with Department heads that morning had centered on clearing up payment problems and that the Secretary and each Commissioner is committed to attempting to clear up existing payment systems. All staff are to be informed of this priority.

Doug Baird, Executive Director of MCHSP, noted that rumors and conflicting information to Providers makes it difficult to locate the source of delays. Departments also have difficulty clarifying the cause of problems. It was agreed to hold weekly meetings of providers and department representatives with the participation of the Comptroller's Division. In this way the specifics behind any lack of payment can be identified and coordinated steps taken to alleviate problems.

Procedure Review

There was an extensive review by the agency representatives attending the meeting of the procedures in area, regional, and central offices that are followed to check Provider billing for compliance with contracts and budgets. This included such issues as the number of work days necessary on an ideal schedule, batching of invoices, and submission to the Comptroller.

Jim Samels, acting Deputy Comptroller, noted that the Comptroller's office can usually track problems if the specific missing payment is identified. He reviewed general causes of delay which included the late appropriation act and the change in subsidiary accounts for social services. He also noted that although Human Services' payments are given priority, the Comptroller has limited staffing and limited use of overtime. Jim outlined pre-audit and validation procedures through the warrant signing and the Treasurer's cutting of checks.

It was emphasized that the certification of available funds through allotment and spending plans can not be overlooked. Clarification of Budget Bureau policies and actual criteria will be given to agency officials, and problems tracked, by way of the weekly meetings noted above.

Timely Payment System

The fact that regular systems, at best, result in payment four to five weeks after

Calendar

ALCOHOLISM & THE FAMILY: SOME TREATMENT MODALITIES. Workshops to be held Fridays, 10/27, 11/3, 11/17, 12/1, 12/8 from 9am - 12 noon at McLean Hospital, 115 Mill St., Belmont, MA. Sponsored by the Mental Health Continuing Education Consortium. For more information contact Paula Peitrella, Consortium office, 855-1283.

ANNUAL CONFERENCE ON FOSTER CARE. To be held Sat., Oct 21, 9 am-5 pm, Best Western Motel, Waltham. Keynote speaker-Cmsr. John McManus, Office of Social Services, DPW. Sponsored by the MA Foster Parents Assn. For more information call Joan Walton, (617) 233-0353.

ISSUES OF ADOLESCENT SEXUALITY. A workshop sponsored by the Family Planning Council of Western MA, Inc. will be held Nov. 3-4, 9am-5pm at the Western MA Health Planning Council, Greenfield, MA, (413) 586-2016. Registration deadline 10/23.

JUVENILE JUSTICE MANAGEMENT TRAINING-FIVE DAY INSTITUTE. JJMT's third 5-day training program will be held Nov. 17-22 at the Colonial Hilton Inn, Wakefield, MA. For more information call Peter Lawrence or Russell Hill at MA Halfway Houses, Boston, 267-1573.

OPEN HOUSE at the new administrative offices of the MA Rehabilitation Commission at 20 Providence St., Boston, MA, 11th floor. To be held Oct. 27, 3pm-5pm. Contact Tina Reid at MRC, 727-2171.

STATEWIDE ADVISORY COUNCIL TO THE OFFICE FOR CHILDREN MEETING. Theme-Accountability in State Government--Alternatives to Proposition 13. Nov 14, 7:30pm at the Sheraton Tara Hotel, Framingham. Contact Audrey Haas at OFC, 727-8904.

DARE FACULTY WILL PRESENT A SERIES OF WORKSHOPS during the fall and winter of 1978-1979, Dates unconfirmed, on "Developing Community Resources to Overcome Community Resistance and Zoning Problems" and "Understanding and Working with Difficult-to-Reach-Person". For more information contact Joan Guberman or Charlie Hauck at the DARE office, 524-7070 in Jamaica Plain.

billing, was stressed, as was the need for expansion of the timely payments system. Lew Livermore of the Budget Bureau reported on progress toward expansion and in meeting the conditions agreed between EOHS and A&F. Development of regulations and sufficient

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Mental Health Services for Children

The legislative subcommittee on Children in Need of Services, chaired by Rep. Philip Johnston (D-Marshfield), held hearings on the status of the Departments of Mental Health and Public Welfare's services for children of this state. Unfortunately, we were not able to attend DPW's but did hear testimony of DMH services, October 3 and 4.

Child Abuse

Although most of the statements concerned the problems and availability of children's services within DMH, the opening testimony, delivered by Republican gubernatorial candidate Francis W. Hatch Jr., focused on his concern for the growing child abuse problem. He stated that, if elected, he would work diligently to for the success of the new Department of Social Services by adequately funding the agency and by personally assuring that competent staff are hired. If elected, Rep. Hatch added that early in his administration he would establish a Governor's Congress on Children and Families to coordinate community and state efforts in children's services, stressing the availability of services at the neighborhood level. In response to Rep. Gregory William Sullivan's (D-Norwood) question, Rep. Hatch stated that he felt the need for the proposed child abuse hotline but would want the assurance of its effectiveness and coordination with existing hotlines.

Further statements concerning the hotline were given by Rep. Barbara Gray (R-Framingham) who suggested that domestic violence be included in that service and that increased emphasis be given to services for the family of the abused child.

Also confronting the child abuse problem was Democratic gubernatorial candidate Edward J. King, who did not appear before the committee, but sent a prepared statement. Mr. King criticized the Dept. of Public Welfare for not establishing a central computerized registry on child abuse cases, and focused further attention on the unnecessary duplication of services by private and public agencies. No additional money is required to improve the existing lack of coordination and communication but rather department rules and administrative procedures that make sense, he added. Mr. King also stated that an individual who is both an effective manager and a strong inspirational leader would be appointed to administer children's services.

Criticism of DMH

Testimony followed by Boston Juvenile Court Judge Francis Poitras, who stated Mental Health is the least responsive state agency, and that although DMH does provide services to families, it provides very little for the individual child. He also cited the costly use of state facilities. Further pursuing the topic, Attorney Robert

Fleishner of the Springfield Juvenile Law Project commented on the lack of mental health services in the community for children.

Mental Health Commissioner Robert Okin testified that 30% of the DMH budget goes to mental health/mental retardation services for children, but that there was not enough money to adequately service the violent and aggressive children in Massachusetts. Under questioning by Chairman Johnston, Cmsr. Okin acknowledged that \$100,000 per child, per year, was being spent for five troubled adolescents at the Solomon Carter Fuller Mental Health Center. Rep. Johnston also questioned the expenditure of funds by the Office of Community Residential Development's research and development of community acceptance of community residences. In particular its contract with Cornhill Associates was discussed. Rep. Johnston requested that the hearings be continued for more testimony by Cmsr. Okin.

Other comments criticizing DMH's services to children included: "confidentiality of client records get in the way of evaluating the progress of a case" (Harold Golmeier, MA Committee for Children & Youth); "inadequate RFP process" (Bill Allen, Educational Communication System); "DMH should purchase individual services if an appropriate program cannot be found" (DYS Commissioner John Calhoun, Chairman of the Adolescent Services Task Force); "DMH does not have a good collaborative relationship with DMH" (James Wells, Asst. Cmsr., DYS); and that "DMH should get away from the medical model" (Joyce Strom, Director of OFC).

Wanted--Commissioner

For newly formed Dept. of Social Services, Graduate degree in related field; 7 yrs. of responsible admin. experience, 3 yrs. being in a human service field. Salary \$36,770. Qualified candidates submit resume to: Social Services Search, Rm.109, State House, Boston, MA 02133.

Thank you to those who submitted articles for this issue of THE PROVIDER. Articles should be sent to Susan von Magnus at MCHSP, by the 25th of each month.

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Regulatory Changes

RATE SETTING COMMISSION: Homemaker/Home Health Aide rates are now governed by regulation 114.3 CMR 11:00 which replaces 14 CHSR 310 and is effective at least until Dec. 21, 1978. New provisions include: Rate limits-are established according to hours of service as well as geographic areas. As volume increases, the percentage allowable for costs other than homemaker wages and statutory benefits, decreases. Administrative staff salaries (executive and assistant directors combined)-those which exceed the median incurred by a representative sample of providers are excluded from reimbursable costs. Mileage expense limit-transportation costs in excess of the mean plus one standard deviation incurred by a sample of providers are excluded from reasonable operating cost. Travel and training time-wages paid during training or for travel between clients are included in reimbursable cost if documentation is submitted from the Dept. of Labor requiring their payment. Training programs must also receive the approval of purchasing governmental units.

DEPT. OF PUBLIC WELFARE, FAMILY PLANNING POLICY-Retroactive from July 1, 1978, the eligibility for family planning services is extended to individuals under the age of eighteen without regard to income.

DEPT. OF PUBLIC WELFARE, EVALUATION AND USE OF FOSTER HOMES-The Dept. is required to obtain the record of criminal convictions of all persons presently approved as foster parents according to the Dept.'s Child Welfare standards. Applicants and foster parents will be informed prior to the Dept.'s request to the Commissioner of Probation. There are separate procedures for approval of foster parents in cases of misdemeanor and felony convictions.

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staff for the Comptroller's division are not presenting problems. Agency plans for audit capacity have not progressed sufficiently to meet the conditions. DMH's audit system is close to being approved but could not be in operation before January or February.

There was disagreement as to whether all timely payment providers or a statistically valid sample would be audited again before expansion. Bob Fazzi, chairman of the Negotiating Committee, noted that these plans have been continually delayed in the last year. Doug Baird, noting that an audit system was part of the Council's initiative for Monitoring and Evaluation two years ago, stated that providers were being penalized in the area of their greatest need while it was the agencies who were unable to develop

the system of accountability. He also stressed that a variety of fiscal controls already exist and questioned whether timely payments auditing is to be substituted for or added to the present array. This included audits supplied to Division of Public Charities by all non-profits, Rate Setting Commission audits, complete documentation on cost reimbursement vouchers, and the income and expense reports made to Departments.

Separate meetings on timely payments will be held to further define what is needed for expansion and how it can be accomplished. Finally, the Council sought and received the commitment of EOHS to the preservation of at least the present range of the system through January and after the change in administration.

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there are the consent decrees mental retardation has been working on for a long time. I think, with the cooperation of the Department, the plaintiffs and the Attorney General's office, that we can get them done.

BAIRD: Can you think of examples like the consent decrees that you will work on between now and December that will directly affect the private, non-profit human service providers?

MITCHELL: I talked with Claire McGuire, EOHS legal counsel, this morning. As I understand it on the standard contract, the agencies are putting it into place already. To whatever degree we can, we will put pieces together that make clear that by the beginning of FY '80 it will be 100% in place. That is a priority.

The timely payments issue is one which I know we are all passionately interested in. Chuck Atkins, the Undersecretary, and I have spoken about it. We have reviewed what has happened to date. I think that what we will try to do in that case, at least, is to get into place the necessary auditing functions so that we can feel comfortable in meeting the desire of the providers and everybody else to expand that program.

BAIRD: Are you optimistic that that will be done before you leave office?

MITCHELL: It would be better asking Chuck that question because that's his specific responsibility. One specific issue that has come up in the past couple of weeks is the slowdown in payments--regular payments. Chuck met with the providers yesterday and I understand you have worked out a system of weekly meetings with the Comptroller to try to resolve and expedite things so that future go-arounds will not have the same problem. I understand he has broken out

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the specific vouchering steps into where the long turn-arounds are to see if those are unduly burdensome or oppressive. I also understand that they have switched some accounting systems earlier this fiscal year, putting all service contracts into 07 accounts, which explained some of the slow-down.

BAIRD: One of the things that I'm beginning to hear from providers is concern that the fall-out from the primary may be that the whole community care system which is part of Governors' Sargent and Dukakis legacy, will fall apart if the next governor decides to reinstitutionalize everybody. Federal money is very much tied up in the so-called deinstitutionalization process and the Commonwealth has really turned some major corners. I don't believe deinstitutionalization can be reversed, regardless of the next governor's interests.

MITCHELL: I think you are right. One of the reasons it's correct is because of federal money. But with all due respect to Governor Sargeant, it's not just Governor Sargent and his legacy to Governor Dukakis. It is a national trend. I think though that one should not rest easy. The speed at which it occurs and the level of care in the community and a number of other qualitative

considerations could be affected. I think that is where all of us who are concerned about community care have to make sure that we understand that we have got to keep on pressing any new administration.

Good News...

In order to better conform to the residential nature of their community, the CHILDREN'S CENTER OF BROOKLINE AND GREATER BOSTON have renovated their yard at the Cypress Street site in Brookline with a grant from a Boston-based foundation. Through a Title VI CETA contract they have provided teacher training for minorities, males, and the elderly. Three interns have already been hired on a permanent basis. And there is more...this past summer, SPEDY funds were used to hire teenagers to assist in the classroom and these youths also found time to build some classroom furniture.

...Bad News

We are sad to say that following surgery, John McSweeney, DYS Chief Accountant, has passed away. John's extraordinary contribution to serving children will be remembered as well as his high standards in timely and regular provider payment systems.

Major State Accounts for the Purchase of Human Services

	FY '79 APPROPRIATION	FY '80 DEPT. REQUEST
MASS. REHABILITATION COMMISSION		
Extended Employment	\$ 1,350,000	\$ 2,068,105
Personal Care	100,000	621,918
OFFICE FOR CHILDREN		
Help for Children Area Accounts	1,940,000	2,120,000
DEPT. OF YOUTH SERVICES		
Purchase of Service	10,362,000	17,842,632
DEPT. OF CORRECTIONS		
Community Reintegration	1,291,000	1,419,121
DEPT. OF PUBLIC WELFARE		
Protective Services	6,590,000	12,000,000
Care and Maintenance	42,100,000	50,930,000
Donated Funds	13,750,000	15,473,000
Day Care	33,000,000	37,870,000
Families and Children	3,050,000	4,113,000
Children in Crisis	4,000,000	5,614,000
Family Planning & Unwed Mothers	1,350,000	4,000,000
Emergency Svc., Battered Women	125,000	1,125,000
Services to Disabled	3,700,000	3,913,000
Child Abuse Hotline	-----	1,000,000
State - Local Demonstration	-----	1,000,000
DEPT. OF PUBLIC HEALTH		
Alcoholism	9,849,317	11,237,977
DEPT. OF MENTAL HEALTH		
Drug Rehabilitation	3,284,495	3,583,347
Expand, Upgrade MR Services	37,261,000	70,500,642
MH Community Children's Svc.	1,311,000	3,739,660
Upgrade Services to Mentally Ill	3,000,000	4,428,000
MH/MR Regional Community Svc.	53,353,000	74,847,545
DEPT. OF ELDER AFFAIRS		
Home Care Services	35,000,000	49,000,000

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activities. On the basis of these examples, it appears that if a §501(c)(3) organization wishes to publicize in any respect information about candidates for public office, then:

- a) the issues treated must be of a wide substantive variety;
- b) they must be selected on the basis of their "...importance and interest to the electorate as a whole";
- c) the information must not evidence a "...bias or preference with respect to the views of any candidate or group of candidates"; and
- d) the information must be "...made generally available to the public."

According to the examples in this Ruling, all four requirements must be satisfied. The Service describes as impermissible the distribution of information which meets criteria a), c), and d) but which relates to only one particular substantive area; in one example, "land conservation matters" are considered too narrow in scope to meet the test of b). In general, the Service cautions that whether a given activity is permissible or not depends upon its particular facts and circumstances and that organizations which are uncertain as to the propriety of their proposed actions should seek a ruling.

In Summary...

the safest and wisest course is for a §501(c)(3) organization not to lend any of its resources - staff, space, telephone, name or funds - to any political campaign and not to engage in an "voter education" activity unless it clearly meets all four of the foregoing requirements or else has been specifically approved by the Service. Of course, persons associated with §501(c)(3) organizations may, as individuals, participate in campaigns, but they should not do so in a manner which appears to, or does, involve company resources:

In addition, two related matters should be considered. First, governmental grants or contracts under which §501(c)(3) organizations receive funds may themselves contain prohibitions, independent of tax rules, on political activity. Second, the rules discussed above apply to political activity-- i.e. involvement in campaigns for office. Legislative activity is governed by separate, different rules.

Let the Critics Pay for the Laconia State School

A few letters have appeared in The Globe recently from New Hampshire residents disclaiming responsibility for the low level of tax support for the Laconia State School. In their view, New Hampshire's government has a moral obligation to take more money from people in order to pay for the training of physically and mentally disabled students.

But the assertion of such an obligation denies the rights of the people from whom the money is taken. Money is earned by production, not by needs and infirmities; the person who earns money is the person who has a right to it. It is robbery to take someone's money from him and spend it on someone else without his consent.

It is interesting that these people who were so indignant about New Hampshire's failure to force people to pay for the Laconia State School expressed no willingness to donate money to a cause that they regard so highly. The state of New Hampshire should turn the Laconia State School over to these people and let them run it with their own money. They have no right to anyone else's.

Gary McGath, Nashua, NH

This letter was reprinted from the Boston Globe's editorial page, with no comment by The Provider!

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