



Federal Register

**Tuesday,
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Part III

**Department of
Health and Human
Services**

42 CFR Parts 54 and 54a

45 CFR Part 96

**Charitable Choice Regulations; Proposed
Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 54 and 54a

45 CFR Part 96

RIN 0930-AA11

Charitable Choice Regulations Applicable to States Receiving Substance Abuse Prevention and Treatment Block Grants, Projects for Assistance in Transition From Homelessness Formula Grants, and to Public and Private Providers Receiving Discretionary Grant Funding From SAMHSA for the Provision of Substance Abuse Services Providing for Equal Treatment of SAMHSA Program Participants

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Charitable Choice statutory provisions of section 581–584 and section 1955 of the Public Health Service Act, applicable to the Substance Abuse Prevention and Treatment (SAPT) Block Grant program, the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, insofar as recipients provide substance abuse services, and to SAMHSA discretionary grants for substance abuse treatment or prevention services, which are all administered by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services. It is SAMHSA's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for SAMHSA funding, and SAMHSA supports the participation of faith-based organizations in its programs for the provision of substance abuse services.

DATES: Submit written comments on this proposal by February 18, 2003. Submit written comments on the information collection provisions by January 16, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of Policy, Planning and Budget, SAMHSA, Attn: Winnie Mitchell by fax (301–443–1450) or e-mail (samhsareg@samhsa.gov).

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for inspection and copying between 9 a.m. and 5 p.m. at the above

address. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, Attn: Lauren Wittenberg by fax (202–395–6974) or e-mail (Lauren_Wittenberg@omb.eop.gov).

FOR FURTHER INFORMATION CONTACT: Winnie Mitchell of the Office of Policy, Planning and Budget, SAMHSA by fax (301–443–1450) or e-mail (samhsareg@samhsa.gov).

SUPPLEMENTARY INFORMATION:

Background

Section 1955 of the Public Health Service Act, 42 U.S.C. 300x–65, as added by the Children's Health Act of 2000 (Pub. L. 106–310), as well as sections 581–584 of the Public Health Service Act, 42 U.S.C. 290kk, *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106–554), (hereinafter referred to as "SAMHSA Charitable Choice provisions") set forth certain provisions which are designed to give people in need of substance abuse services a greater choice of SAMHSA-supported substance abuse prevention and treatment programs. SAMHSA's Charitable Choice provisions ensure that religious organizations are able to compete on an equal footing for Federal substance abuse funding administered by SAMHSA, without impairing the religious character of such organizations and without diminishing the religious freedom of SAMHSA beneficiaries. These provisions apply to recipients of the Substance Abuse Prevention and Treatment (SAPT) Block Grant funds, the Projects for Assistance in Transition from Homelessness (PATH) formula grant funds, 42 U.S.C. 290cc–21, *et seq.*, and to SAMHSA discretionary grants funds for substance abuse prevention and treatment services (42 U.S.C. 290aa, *et seq.*)

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, nonprofit organizations, and neighborhood groups, offer scores of social services to those in need. The SAMHSA Charitable Choice provisions are consistent with the Administration's belief that there should be an equal opportunity for all organizations—both faith-based and nonreligious—to participate as partners

in Federal programs to serve Americans in need.

Purpose of Proposed Rule

The SAMHSA Charitable Choice provisions contain important protections both for religious organizations that receive SAMHSA funding for substance abuse services and for the individuals who receive services from such programs. The objective of this proposed rule is to ensure that SAMHSA substance abuse programs are open to all eligible organizations, regardless of religious character or affiliation, and to establish clearly the proper uses to which funds may be put and the conditions for receipt of funding. The proposed regulations seek to provide maximum flexibility to the States and local governments, and to religious organizations that are "program participants" in implementing these provisions. In that vein, SAMHSA proposes that duly-designated officials from the States and applicants for SAMHSA discretionary funding for applicable programs assure that they will comply with these provisions.

Proposed Regulations

The Department is proposing to amend the regulations to add 42 CFR part 54 and part 54a. Part 54 addresses implementation of these provisions with regard to SAMHSA's Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x-66, and to SAMHSA's Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35, in which the State has most of the responsibility for implementation. Part 54a addresses implementation of these provisions with regard to SAMHSA's discretionary grant programs, 42 U.S.C. 290aa *et seq.*, in which implementation responsibility is shared among SAMHSA, and the States and local governments as recipients of those grants. Some of the main provisions of the proposed rule are as follows, along with specific questions regarding the alternative service provision on which SAMHSA is seeking input during the regulatory comment process.

Equal Treatment for Religious Organizations. Under SAMHSA's Charitable Choice provisions, organizations are eligible to participate in SAMHSA programs without regard to their religious character or affiliation, and organizations may not be excluded from the competition for Federal funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the

same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, and State and local governments administering Federal funds under SAMHSA substance abuse grant programs, are prohibited from discriminating against organizations on the basis of religion or their religious character.

Restriction on Religious Activities By Organizations That Receive Funding Directly From SAMHSA. The proposed rule describes limitations on the use of substance abuse funds provided directly from SAMHSA or the relevant State or local government to an organization, as opposed to those funds that an organization receives as the result of the genuine and independent private choice of a beneficiary.¹

Specifically, SAMHSA funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct SAMHSA assistance, and participation must be voluntary for the beneficiaries of the SAMHSA-funded programs or services. This requirement ensures that SAMHSA funds provided directly to religious organizations are not used to support inherently religious activities. Thus, SAMHSA funds provided directly to a participating organization, including formula grant funds, must not be used by a substance abuse treatment or prevention program, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean a SAMHSA-funded substance abuse service organization cannot engage in inherently religious activities. It means simply that such an organization cannot fund these activities with the funds provided directly by SAMHSA or the relevant State or local government. Thus, faith-based organizations that receive direct SAMHSA funds must take

steps to separate, in time or location, their inherently religious activities from the government-funded services that they offer.

In addition, any participation by a beneficiary in such religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, participating religious organizations must be careful to reassure program beneficiaries that they will receive SAMHSA-funded help even if they do not participate in these activities, and that their decision will have no bearing on the services they receive. In short, any participation by recipients of SAMHSA-funded services in such religious activities must be voluntary and understood to be voluntary.

These restrictions on inherently religious activities do not apply where SAMHSA funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary. A religious organization may receive SAMHSA funds as the result of a beneficiary's genuine and independent private choice if, for example, the State has established a voucher, coupon, certificate, or similar funding mechanism for a beneficiary to redeem using SAMHSA funds under a program that is designed by a State to give that individual a choice among providers. Thus, religious organizations that receive SAMHSA funds to provide services as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the SAMHSA-funded services they provide, provided they otherwise satisfy the requirements of the program.

Religious Character and Independence of Religious Organizations. The proposed rule clarifies that a religious organization that participates in SAMHSA programs retains its independence from Federal, State, and local governments. It may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct SAMHSA funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use their facilities to provide SAMHSA-funded substance abuse services, without removing religious art, icons, scriptures, or other symbols. In addition, a religious organization receiving funds from SAMHSA for substance abuse services may retain religious terms in its organization's name, may select its

board members on a religious basis, and may include religious references in its organization's mission statements and other governing documents.

Employment Practices. The proposed rule clarifies that the participation of a religious organization in, or its receipt of funds from, a SAMHSA substance abuse services program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, hire employees who share its religious beliefs. This provision protects the religious liberty of communities of faith. It helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. The SAMHSA Charitable Choice provisions thus reflect the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

To the extent that 42 U.S.C. 300x-57(a)(2) or 42 U.S.C. 290cc-33(a)(2) imposes religious nondiscrimination requirements on the employment practices of program participants, the proposed rule clarifies that such requirements do not apply to program participants that demonstrate that these requirements would substantially burden their exercise of religion. In addition to being a reasonable construction of the SAMHSA Charitable Choice provisions, including 42 U.S.C. 300x-57, 300x-65, 290cc-33, 290kk-1, and 290kk-2, the inapplicability of section 300x-57(a)(2) and 290cc-33(a)(2) to religious organizations that can demonstrate a substantial burden on their exercise of religion arises from the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.* Under this statute, the government may not impose legal requirements that substantially burden a grantee's exercise of religion except in defined circumstances. 42 U.S.C. 2000bb-1(a)-(b). As applied here, where a religious entity establishes that its exercise of religion would be substantially burdened by the religious nondiscrimination requirements of sections 300x-57(a)(2) or 290cc-33(a)(2), the Religious Freedom Restoration Act supercedes those statutory requirements, thus exempting the religious entity therefrom.

This determination is based on several factors: religious entities are

¹ In the Charitable Choice context, the term "direct" funding is used to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In these proposed regulations, the term "direct" has the former meaning.

provided an exemption, under 42 U.S.C. 2000e-1(a), from the religious nondiscrimination requirements of the Civil Rights Act of 1964, which reflects Congress's judgment that employment decisions are an important component of religious entities' autonomy; many federal funding programs do not impose a religious nondiscrimination requirement upon the employment practices of grantees; 42 U.S.C. 300x-57(a)(2) and 290cc-33(a)(2) do not apply to the discretionary grant programs administered by the Secretary under this title; and secular entities that administer federally funded social programs generally are not precluded from considering their ideologies in making employment decisions. Congress's highly selective application of religious nondiscrimination requirements in the employment context belies the notion that there is a compelling governmental interest in applying such requirements to entities that make decisions to hire individuals of a particular religion in order to maintain their religious identity, autonomy, and/or communal religious exercise. A recipient that demonstrates a substantial burden from the application of the religious nondiscrimination requirements of sections 300x-57(a)(2) or 290cc-33(a)(2) is therefore entitled to employ individuals of a particular religion, notwithstanding the requirements of those provisions, as it would otherwise be entitled to do under 42 U.S.C. 2000e-1(a).

A religious organization that is a recipient of SAMHSA funds for the provision of substance abuse services that wishes to establish a substantial burden from the application of 42 U.S.C. 300x-57(a)(2) or 290cc-33(a)(2) to its organization, for the purpose of obtaining an exemption under 42 U.S.C. 2000bb, *et seq.*, must certify: (1) That it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise; (2) that it makes employment decisions on a religious basis in analogous programs; (3) that the grant would materially affect its ability to provide the type of services in question; and (4) that providing the services in question is expressive of its values or mission. The organization must maintain documentation to support these determinations and must make such documentation available to SAMHSA upon request.

Finally, the proposed rule makes clear that nothing in this section shall be construed to modify or affect any State

law or regulation that relates to discrimination in employment.

Nondiscrimination Against Beneficiaries. The proposed rule also clarifies provisions of SAMHSA's Charitable Choice provisions that apply to the individuals who receive SAMHSA-funded services. First, the proposed rule makes it clear that religious organizations participating in a SAMHSA-funded substance abuse program are prohibited from discriminating against beneficiaries or potential beneficiaries on the basis of religion or religious belief. Accordingly, religious organizations, in providing substance abuse services funded in whole or in part by SAMHSA, and in their outreach activities related to such services, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate actively in a religious practice.

Notice, Referral, and Provision of Alternative Services. SAMHSA invites specific comment on sections 54.8 and 54a.8 of the following regulations, regarding a program beneficiary's right to alternative services. In general, SAMHSA believes that securing alternative services for an individual at the local level may ultimately not be a function best performed by a Federal agency, but is rather best met by those who know the community best and are most informed about the availability of services. Because SAMHSA seeks to maximize State and provider flexibility in implementing these provisions, and because SAMHSA wants to ensure that the regulations rely on existing State and local practices for implementation, SAMHSA is seeking comment on the following general questions:

- How can State and local flexibility be maximized in implementing these provisions?
- How accurate are the paperwork burden estimates and how can the paperwork burden related to implementing these provisions be minimized?
- How should SAMHSA track the effectiveness of the implementation of these Charitable Choice provisions? What methods should States and program participants use and report to ensure implementation of the Charitable Choice provisions?

General Requirements. The proposed rule clarifies SAMHSA's Charitable Choice provisions stipulating that individuals who are receiving or may receive substance abuse services from a program participant funded in whole or in part by SAMHSA may object to the

religious character of that participant, in which case they are entitled to receive services from an alternative provider. They have a right to receive a referral to an alternative provider within a reasonable period of time. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. According to the SAMHSA Charitable Choice provisions, such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

To implement this right, the proposed rule imposes obligations on both SAMHSA-funded religious organizations and the governmental entity administering the program with respect to notice, referral, and provision of services from alternative providers. SAMHSA recognizes that a range of methods of fulfilling these responsibilities is possible, and therefore does not seek to prescribe a single, inflexible referral system that States must adopt. Rather, SAMHSA encourages State agencies, working in concert with local governments, religious providers, and other program providers, to develop systems to comply with the requirements, monitor compliance, identify compliance problems, and take necessary corrective actions. It is important that State and local agencies and religious organizations work cooperatively to develop systems to comply with these provisions, monitor compliance, identify compliance problems and take necessary corrective actions.

Notice. The SAMHSA Charitable Choice provisions require SAMHSA-funded religious organizations providing substance abuse services, public agencies that refer individuals to such SAMHSA-funded programs, and the appropriate Federal, State, or local governments that administer these SAMHSA-funded programs to ensure that notice is provided to beneficiaries and prospective beneficiaries regarding alternative services. The notice must articulate clearly the program beneficiary's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above. A model notice, which States and religious organizations are free to use, is provided at the end of this proposed rule.

Referral to Alternative Provider. If an individual objects to the religious character of the substance abuse treatment or prevention program from which they are receiving services, the religious organization must refer the individual, within a reasonable period of time, to another provider of substance abuse services. SAMHSA invites specific comment on what constitutes a "reasonable period of time" under various circumstances. Should States be given the flexibility to determine this, given that there are established referral and substance abuse services systems in each State? Alternatively, should SAMHSA provide a clearer idea of what is a reasonable period of time (for example, "within 48 hours," "within one week," etc.)?

In making a referral, the religious organization must consider any list that the State or local government makes available of other entities in a reasonably accessible geographic area that provide substance abuse services. For example, a religious organization could check SAMHSA's treatment facility locator at <http://findtreatment.samhsa.gov> to identify providers in the surrounding area and consult with the relevant governmental officials about referrals to programs that are reasonably accessible and of equal value. The locator includes residential treatment programs, outpatient treatment programs, and hospital inpatient programs for drug addiction and alcoholism. All information in the locator is updated each year, based on facility responses to SAMHSA's National Survey of Substance Abuse Services. Further updates are made monthly as new information is provided by facilities.

SAMHSA-funded religious organizations must take reasonable steps to ensure that the individual makes contact with the alternative provider to which the individual is referred, and they must notify "the appropriate Federal, State, or local government" of the referral. In the case of the SAPT and PATH programs, the appropriate government is the State. In the case of SAMHSA's substance abuse prevention and treatment discretionary grant funding, it is either SAMHSA or the recipient State or local government.

For SAPT or PATH programs, if the religious organization cannot locate an appropriate alternative provider for a referral, it should contact the State agency that administers the program. The State agency can then take steps to identify an appropriate alternative. In the event that the State agency is unable to locate an alternative provider, the State can contact SAPT block grant or

PATH grant officials in SAMHSA for assistance. For SAMHSA discretionary grants made directly to religious organizations, the religious organization can work with SAMHSA to identify an appropriate referral. For SAMHSA discretionary grants to States and localities, the religious organization can work with the recipient government to identify an appropriate referral, using the referral system utilized by the State or locality as required by the rule.

The religious organization (program participant) shall take reasonable steps to ensure that the individual makes contact with the alternative provider to which the individual is referred. All referrals are to be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2. Upon referring a program beneficiary to an alternative provider, the program participant shall notify the appropriate Federal, State, or local government agency that administers the program of such referral. It is the States' responsibility to determine the nature and timing of such notification under the SAPT block grant and the PATH program. SAMHSA invites specific comment on how referring organizations can ensure that individuals make contact with alternative providers, and whether and how they should document the steps they have taken, in a manner that is consistent with all applicable confidentiality laws. For example, should the provider be required to record and call the alternative provider to notify them of the referral; to provide the name and address of the alternative provider to the program beneficiary; and to make a second follow-up call to the alternative provider? What burdens would such requirements place on providers?

Provision of Alternative Services. Under SAMHSA's Charitable Choice provisions, the responsibility for providing the alternative services rests with the "the appropriate Federal, State, or local government" that administers the program or is a program participant. Alternative service providers identified by the Federal, State, or local government must be reasonably accessible and have the capacity to provide comparable substance abuse services. The services provided by the alternative provider must have a value that is not less than the value of the services that the individual would have received from the referring organization.

The SAMHSA Charitable Choice provisions require States to provide and fund alternative services for SAPT-funded and PATH program beneficiaries who have objected to the religious

character of a program participant. States may use SAPT block grant and PATH grant funding to provide and fund such services from a provider to which the program beneficiaries do not have a religious objection, in a manner consistent with State law and policy.

With respect to SAMHSA discretionary grant funding, when SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to nongovernmental organizations, SAMHSA is the responsible unit of government.

SAMHSA invites comment on the following questions related to the implementation of this provision:

- How can an alternative services system best be implemented in a system characterized by treatment gaps, shortages and waiting lists (*i.e.*, how can program beneficiaries best be assured of alternative services?)

- Similarly, what constitutes "reasonably accessible services," given the differences in available services in various regions of the country?

- What is the best understanding of the phrase "services that * * * have a value that is not less than the value of [services that would otherwise be provided]"?

- Under discretionary programs, what are the options for securing and financing alternative services? Would placing the responsibility on the grantee for securing alternative services as a condition of the grant award (including financing of such services, as necessary) be consistent with the statutory requirement that the appropriate Federal, State, or local governments "provide" alternative services? Or does the statute require these governmental entities to secure and finance alternative services? What sort of financial problems would be imposed by placing such responsibilities on grantees?

Fiscal Accountability. The proposed rule outlines the financial responsibility incurred through the receipt of SAMHSA funds. Religious organizations that receive SAMHSA funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. In addition, religious organizations are required to keep any Federal funds that they receive for substance abuse services segregated in a separate account from non-Federal funds. Only the segregated Federal funds are subject to

audit by the government under the SAMHSA program.

Effect on State and Local Funds. The proposed rule, consistent with 42 U.S.C. 300x-65(d), provides that if a State or local government contributes its own funds to supplement SAMHSA-funded substance abuse activities, the State or local government has the option to separate out the Federal funds or commingle them. However, if the funds are commingled, the SAMHSA Charitable Choice provisions apply to all of the commingled funds.

Treatment of intermediate organizations. The proposed rule provides that, if a nongovernmental organization (referred to here as an "intermediate organization"), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select other nongovernmental organizations to provide services under any substance abuse program, the intermediate organization has the same duties under the SAMHSA Charitable Choice provisions and the implementing regulations as the government and must ensure that there is compliance with the SAMHSA Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under SAMHSA's Charitable Choice provisions.

Educational Requirements for Personnel in Drug Treatment Programs. The proposed rule reiterates the requirement of 42 U.S.C. 290kk-3, which provides that, in determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to the coursework or training provided by nonreligious organizations or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

Assurances and State Oversight of the Charitable Choice Requirements. In order to ensure that States receiving grant funding under the SAPT block grant and PATH formula grant programs abide by the Charitable Choice provisions and provide oversight of religious organizations that provide substance abuse services under such

programs, the proposed rule requires States, as part of their applications for funding under each program, to certify that they will comply with all of the requirements of the SAMHSA Charitable Choice provisions and to submit to the Secretary a summary each year of the steps it has taken to implement this regulation. The Department is proposing changes to existing regulations for the SAPT block grant to require such assurance and summary. Similar assurances, to be signed by applicants for SAMHSA PATH funds and discretionary substance abuse treatment and prevention grants, will be added to the assurances listed in PHS Form 5161, *Public Health Service Grant Application for State and Local Government Applicants and Non-governmental Applicants for Health Services Projects*.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). We have determined that the rule is a "significant regulatory action" under section 3(f) of the Executive Order, and it has therefore been reviewed by the Office of Management and Budget under that order.

Regulatory Flexibility

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. We have determined that this is not a "major" rule under the Regulatory Flexibility Act of 1980, and that it will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. We have determined that this rule will not result in an aggregate expenditure by State, local or tribal governments of \$100 million or more in any given year.

Executive Order 13132: Federalism Implications

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Regulations to Implement SAMHSA's Charitable Choice Statutory Provisions—42 CFR Parts 54 and 54a.

Description: Section 1955 of the Public Health Service Act (42 U.S.C. 300x-65), as amended by the Children's Health Act of 2000 (Pub. L. 106-310) and sections 581-584 of the Public Health Service Act (42 U.S.C. 290kk *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106-554)), set forth various provisions which aim to ensure that religious organizations are able to compete on an equal footing for Federal funds to provide substance abuse services. These provisions allow religious organizations to offer substance abuse services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals who receive the services. The provisions apply to the Substance Abuse Prevention and Treatment Block Grant (SAPT BG), to the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, and to certain Substance Abuse and Mental Health Services Administration (SAMHSA) discretionary grant programs (programs that pay for substance abuse treatment and prevention services, not for certain infrastructure and technical assistance activities). Every effort has been made to assure that the reporting, recordkeeping and disclosure requirements of the proposed regulations allow maximum

flexibility in implementation and impose minimum burden.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Response burden estimate: This proposed rule includes requirements for disclosure by program participants to program beneficiaries of their rights to receipt of services from an alternative

service provider, for notification by program participants to the applicable level of government of referrals made to alternative service providers, and requirements for reporting of activities to comply with these regulations. The rule also requires that a program participant under the Substance Abuse Prevention and Treatment Block Grant (SAPT BG) and the Projects for

Assistance in Transition from Homelessness (PATH) programs that believes it would be substantially burdened by application of the requirements of 42 U.S.C. 300x-57(a)(2) or 42 U.S.C. 290cc-33(a)(2) must sign a certification to that effect and must maintain documentation to support the certification.

ANNUAL BURDEN ESTIMATES

42 CFR citation and purpose	Number of responses	Responses per respondent	Hours per response	Total hours
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Part 54—States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness Grants

Reporting

54.8(c)(4) Program 40 4 0.33 53 participant notification to responsible unit of government regarding referrals to alternative service providers	40	4	0.33	53
54.8(e) Annual report 56 1 2.00 112 by PATH grantees on activities undertaken to comply with 42 CFR Part 54	56	1	2.00	112

Disclosure

54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider. SAPT BG	1,000	275	.05	13,750
PATH	100	170	.05	850

Recordkeeping

54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x-57 or 42 U.S.C. 290cc-33(a)(2)	50	1	1.00	50
Part 54—Subtotal	1,156	14,815

Part 54a—States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services

Reporting

54a.8(c)(1)(iv) Program participant notification to State or local government of a referral to an alternative provider	25	4	.083	8
54a(8)(d) Program participant notification to SAMHSA of referrals	20	2	.25	10

Disclosure

54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	100	275	.05	1,375
Part 54a—Subtotal	100	1,393
Total	1,256	16,208

In addition, the regulations for the Substance Abuse Prevention and Treatment Block Grant (45 CFR part 96) will be amended to include at 45

CFR 92.122(f)(5) a requirement to include as part of the annual report a description of the activities the State has undertaken to comply with 42CFR part

54. This reporting burden is estimated as follows:

45 CFR citation and purpose	Number of respondents	Responses per respondent	Hours per response	Total hours
96.122(f)(5) Annual report of activities the State undertook to comply with 42 CFR Part 54	60	1	2	120

As required by section 3507(d) of the PRA the Secretary has submitted a copy

of this proposed rule to OMB for its review. Comments on the information

collection requirements are specifically solicited in order to: (1) Evaluate

whether the proposed collection of information is necessary for the proper performance of DHHS's functions, including whether the information will have practical utility; (2) evaluate the accuracy of DHHS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to DHHS on the proposed regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB. (address above).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Although it is not clear that the proposed rule will have tribal implications, we specifically solicit comment on this proposed rule from tribal officials.

Dated: December 12, 2002.

Tommy G. Thompson,
Secretary of Health and Human Services.

List of Subjects

42 CFR Parts 54 and 54a

Grant programs—social programs, Public assistance programs, Substance abuse treatment.

45 CFR Part 96

Grant programs—social programs

The Department of Health and Human Services proposes to amend 42 CFR chapter I and 45 CFR subtitle A as follows:

1. Add a new part 54 to title 42 of the Code of Federal Regulations to read as follows:

42 CFR—CHAPTER I

PART 54—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES RECEIVING SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANTS AND/OR PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS GRANTS

Sec.

- 54.1 Scope.
- 54.2 Definitions.
- 54.3 Nondiscrimination against religious organizations.
- 54.4 Religious activities.
- 54.5 Religious character and independence.
- 54.6 Employment practices.
- 54.7 Nondiscrimination requirement.
- 54.8 Right to services from an alternative provider.
- 54.9 Assurances and State oversight of the Charitable Choice requirements.
- 54.10 Fiscal accountability.
- 54.11 Effect on State and local funds.
- 54.12 Treatment of intermediate organizations.
- 54.13 Educational requirements for personnel in drug treatment programs.

Authority: 42 U.S.C. 300x–65 *et seq.*, 42 U.S.C. 290kk *et seq.*, 42 U.S.C. 300x–21, *et seq.*, 42 U.S.C. 290cc–21, *et seq.*, and 42 U.S.C. 2000bb, *et seq.*

§ 54.1 Scope.

These provisions apply only to awards that pay for substance abuse prevention and treatment services under 42 U.S.C. 300x–21 *et seq.*, and 42 U.S.C. 290cc–21 to 290cc–35. This part does not apply to awards under any such authorities for activities that do not involve the direct provision of substance abuse services, such as for infrastructure activities authorized under section 1971 of the PHS Act, 42 U.S.C. 300y, and for technical assistance activities. This part implements the SAMHSA Charitable Choice provisions, 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

§ 54.2 Definitions.

(a) *Applicable program* means the programs authorized under:

- (1) The Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x–66, and
- (2) The Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35 insofar as they fund substance abuse prevention and/or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance, under an applicable program.

(e) *SAMHSA* means the Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x–65 and 42 U.S.C. 290kk.

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs, as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of the organization's religious character or affiliation.

§ 54.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any

applicable program, and participation must be voluntary for the program beneficiaries.

§ 54.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government, to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54.6 Employment practices.

(a) The participation of a religious organization in, or its receipt of funds from, an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

(b) To the extent that 42 U.S.C. 300x-57(a)(2) or 42 U.S.C. 290cc-33(a)(2) precludes a program participant from employing individuals of a particular religion to perform work connected with the carrying on its activities, those provisions do not apply if such program participant is a religious corporation, association, educational institution, or society and can demonstrate that its religious exercise would be substantially burdened by application of these religious nondiscrimination requirements to its employment practices in the program or activity at issue.

(1) In order to make this demonstration, the program participant must certify:

(i) That it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise;

(ii) That it makes employment decisions on a religious basis in analogous programs;

(iii) That the grant would materially affect its ability to provide the type of services in question; and

(iv) That providing the services in question is expressive of its values or mission.

(2) The organization must maintain documentation to support the determinations in paragraph (b)(1) of this section and must make such documentation available to SAMHSA upon request.

(c) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

(d) The phrases "with respect to the employment," "individuals of a particular religion," and "religious corporation, association, educational institution, or society" shall have the same meaning as those terms have under section 702 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1(a).

§ 54.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in paragraphs (b) through (d) of this section.

(b) *Notice.* Program participants that refer an individual to alternative service providers, and the State government that administers the applicable programs, shall ensure that notice of the individual's right to services from an alternative provider is provided to program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section.

(c) *Referral to an alternative provider.* If a program beneficiary or prospective

program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider. The State shall have a system in place to ensure that referrals are made to an alternative provider. That system shall ensure that the following occurs:

(1) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider.

(2) In making such referral, the program participant shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(3) All referrals shall be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records");

(4) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the State of such referral; and

(5) The program participant shall ensure that the program beneficiary makes contact with the alternative provider to which he or she is referred.

(d) *Provision and Funding of Alternative Services.* The State, in administering the SAPT block grant and PATH programs, shall provide to an otherwise eligible program beneficiary or prospective program beneficiary who objects to the religious character of a program participant and fund services from an alternative provider that is reasonably accessible and has the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

(e) *PATH Annual Report.* As part of the annual report to SAMHSA, PATH grantees shall include a description of the activities the grantee has taken to comply with 42 CFR part 54.

§ 54.9 Assurances and State oversight of the charitable choice requirements.

In order to ensure that States receiving grant funding under the SAPT block grant and PATH formula grant programs comply with the SAMHSA Charitable Choice provisions and provide oversight of religious organizations that provide substance abuse services under such programs, States are required as part of their applications for funding to certify that they will comply with all of the requirements of such provisions and the implementing regulations under this part, and that they will provide such oversight of religious organizations.

§ 54.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

Religious organizations shall segregate Federal funds they receive under an applicable program into a separate account from non-Federal funds. Only the Federal funds shall be subject to audit by government under the SAMHSA program.

§ 54.11 Effect on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

§ 54.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an "intermediate organization"), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

2. Add a new part 54a to title 42 of the Code of Federal Regulations to read as follows:

PART 54a—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES, LOCAL GOVERNMENTS AND RELIGIOUS ORGANIZATIONS RECEIVING FUNDING UNDER TITLE V OF THE PUBLIC HEALTH SERVICE ACT, 42 U.S.C. 290aa, ET SEQ., FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT SERVICES

Sec.

- 54a.1 Scope.
- 54a.2 Definitions.
- 54a.3 Nondiscrimination against religious organizations.
- 54a.4 Religious activities.
- 54a.5 Religious character and independence.
- 54a.6 Employment practices.
- 54a.7 Nondiscrimination requirement.
- 54a.8 Right to services from an alternative provider.
- 54a.9 Oversight of the Charitable Choice requirements.
- 54a.10 Fiscal accountability.
- 54a.11 Effect on State and local funds.
- 54a.12 Treatment of intermediate organizations.
- 54a.13 Educational requirements for personnel in drug treatment programs.
- 54a.14 Determination of nonprofit status.

Authority: 42 U.S.C. 300x-65, and 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 290aa, *et seq.*

§ 54a.1 Scope.

These provisions apply only to awards that pay for substance abuse prevention and treatment services under Title V of the Public Health Service Act, 42 U.S.C. 290aa, *et seq.*, which are administered by the Substance Abuse and Mental Health Services Administration. This part does not apply to awards under any such authorities for only mental health services or for certain infrastructure and technical assistance activities, such as

cooperative agreements for technical assistance centers, that do not provide direct services to clients. This part implements the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

§ 54a.2 Definitions.

(a) *Applicable program* means the programs authorized under Title V of the PHS ct, 42 U.S.C. 290aa, *et seq.*, for the provision of substance abuse prevention and or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance under an applicable program.

(e) *SAMHSA* means the Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk *et seq.*

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54a.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of the

organization's religious character or affiliation.

§ 54a.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54a.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54a.6 Employment practices.

(a) The participation of a religious organization in or its receipt of funds from an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

(b) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

§ 54a.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a

program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54a.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in subsections 54.8a(b)–(d) of this section. With respect to SAMHSA discretionary programs, for purposes of determining what is the appropriate Federal, State, or local government, the following principle shall apply: When SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to a nongovernmental organization, SAMHSA is the responsible unit of government.

(a) *Notice.* Program participants that refer an individual to alternative providers, and the appropriate Federal, State, or local governments that administer the applicable programs, shall ensure that notice of the individual's rights to services from an alternative provider is provided to program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section.

(c) *Referral to services from an alternative provider.* If a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider.

(1) When the State or local government is the responsible unit of government, the State shall have a system in place to ensure that such referrals are made. That system shall ensure that the following occurs:

(i) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider.

(ii) In making such referral, the program participant shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(iii) All referrals are to be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records");

(iv) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the responsible unit of government of such referral;

(2) When SAMHSA is the responsible unit of government, the referral process is as follows:

(i) When a program beneficiary requests alternative services, the program participant will seek to make such a referral.

(ii) If the religious organization cannot locate an appropriate provider of alternative services, the program participant will contact SAMHSA. They will work together to identify additional alternative providers, utilizing the SAMHSA Treatment Locator system, if appropriate.

(iii) The program participant will contact these alternative providers and seek to make the referral, in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records")

(iv) In the event the program participant is still unable to locate an alternative provider, it may again contact SAMHSA for assistance.

(d) *Referral Reporting Procedures.* The program participant shall notify the appropriate Federal, state or local government agency that administers the program of such referral. If a State or local government is the responsible unit of government, they may determine their own reporting procedures. When SAMHSA is the responsible unit of government, this notification will occur during the course of the regular reports that may be required under the terms of the funding award.

(e) *Provision and Funding of Alternative Services.* The responsible unit of government, as defined in subsection (a), shall provide to an otherwise eligible program beneficiary or prospective program beneficiary who objects to the religious character of a program participant, services and fund services from an alternative provider that is reasonably accessible to, and has

the capacity to provide such services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

§ 54a.9 Oversight of the Charitable Choice requirements.

In order to ensure that program funds are used in compliance with the SAMHSA Charitable Choice provisions, applicants for funds under applicable programs are required, as part of their applications for funding, to certify that they will comply with all of the requirements of the SAMHSA Charitable Choice provisions and the implementing regulations under this part.

§ 54a.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

(b) Religious organizations shall segregate Federal funds they receive under applicable programs into a separate account from non-Federal funds. Only the Federal funds shall be subject to audit by the government under the SAMHSA program.

§ 54a.11 Effect on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the

provisions of this part shall apply to all of the commingled funds, in the same manner, and to the same extent, as the provisions apply to the Federal funds.

§ 54a.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an “intermediate organization”), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54a.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

§ 54a.14 Determination of nonprofit status.

The nonprofit status of any SAMHSA applicant can be determined by any of the following:

(a) Reference to the organization’s listing in the Internal Revenue Service’s

(IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code.

(b) A copy of a currently valid IRS Tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholder or individuals.

(d) A certified copy of the organization’s certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization.

(e) Any of the above proof for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

45 CFR Subtitle A

PART 96—[AMENDED]

3. In 45 CFR subtitle A, amend part 96 as follows:

a. In § 96.122, add paragraph (f)(5)(v) to read as follows:

§ 96.122 Application content and procedures

* * * * *

(f) * * *

(5) * * *

(v) A description of the activities the State has undertaken to comply with 42 CFR part 54.

* * * * *

b. In § 96.123, add paragraph (a)(18) to read as follows:

§ 96.123 Assurances

(a) * * *

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

[FR Doc. 02-31673 Filed 12-12-02; 4:32 pm]

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