

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:** Final rule.

SUMMARY: On December 17, 2002, the Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) to implement the Charitable Choice statutory provisions 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. The Secretary requested comments on the NPRM and gave 60 days for individuals to submit their written comments to the Department. The Secretary has considered the comments received during the open comment period and is issuing the final regulation in light of those comments.

EFFECTIVE DATE: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Daryl Kade, Associate Administrator for Planning and Budget, 12C-06 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-4111.

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, and to SAMHSA discretionary grant funds for substance abuse prevention and treatment services.

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 myriad 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. SAMHSA's Charitable Choice statutory provisions were enacted within the constitutional framework of government interaction with religious organizations. The goal of Charitable Choice is not to support or sponsor religion, but to ensure fair competition among providers of services whether they are public or private, secular or faith-based.

Purpose of 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 rule will work 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 regulations provide maximum flexibility to the States and local governments, and to religious organizations that are "program participants" in implementing these provisions. In that vein, the final rules provide that, as part of the application package they submit for funding, duly-designated officials from the States, local governments, and applicants for SAMHSA discretionary funding for applicable programs will assure that they will comply with these provisions.

Brief Overview of the Rule

The Department is amending 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-21 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.

Response to Comments Received on the Proposed Rule

The Department received comments about the Charitable Choice proposed rule from 62 commenters, as follows:

- 15 comments from 13 States
- 13 comments from faith-based organizations
- 11 comments from substance abuse associations and providers
- 10 comments from individuals not representing particular groups or organizations
- 8 comments from advocacy groups and civil rights organizations
- 2 comments from public and State/local interest groups
- 2 from law firms
- 1 from a Federal agency

In general, comments from the States and providers centered on the implementation of Section 54.8 and Section 54a.8, the alternative services provisions. Comments from faith-based organizations, advocacy groups, and interest groups centered on how to keep religious activities separated from social services, and how to safeguard the rights of both the religious organization and the program beneficiary.