

Response: The Charitable Choice regulation maintains that the organization's inherently religious activities must be kept separate—i.e., in time or location—in order to prevent the organization from using some or all of the SAMHSA funds provided to it to further its inherently religious activities. The inherently religious activities must be funded privately in their entirety.

For example, a church has a contract with SAMHSA to provide a substance abuse prevention class. The class is held in the finished basement of the church, the same place where the pastor of the church holds a Bible study group at the end of the day, when all other classes have ended. The pastor has extended an open invitation for anyone who wishes, to attend the study group. The church must use private funds to pay for this Bible study activity. Thus, faith-based organizations that receive direct SAMHSA funds must take steps to separate, in time or location, their inherently religious activities from the SAMHSA-funded services that they offer.

In addition, any participation by a program beneficiary in inherently religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, directly funded religious organizations must be careful to reassure program beneficiaries that they will receive services or benefits 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 services in such religious activities must be voluntary and understood to be voluntary.

As some of the commenters noted, it would be difficult to establish an acceptable list of all inherently religious activities. Inevitably, the definition would fail to include some inherently religious activities or include certain activities that are not inherently religious. Our approach is consistent with Supreme Court precedent, which likewise has not comprehensively defined inherently religious activities. The Court has explained, however, that prayer and worship are inherently religious, but that social services do not become inherently religious merely because they are conducted by individuals who are religiously motivated to undertake them or view the activities as a form of "ministry."

Comment: Other commenters were concerned because the potential for violating the requirement to separate religious and non-religious components of a program is heightened in the area

of substance abuse services, which is sometimes viewed as a spiritual problem.

Response: The restrictions on inherently religious activities by organizations that receive funding directly from SAMHSA¹ remain the same as those described in the proposed rule. The Department agrees that these activities include worship, religious instruction, and proselytization. (Other basic examples include prayer meetings and devotional studies of sacred texts.) The right to maintain a group's religious character does not include the right to use government funds to pay for inherently religious activities or materials.

Comment: Questions were also raised about whether 12-step programs or, specifically, AA programs, are religious programs.

Response: With regard to the 12-step and AA meetings, we note that any inherently religious activities must be voluntary and must be offered separately in time or location from the program that receives direct SAMHSA funding.

Comment: A commenter stated that the exclusion of all "inherently religious" activities from government funding is flawed, and puts many faith-based organizations in the position of having to choose either to deny their core religious perspectives on social issues or to reject government funds for their programs that accomplish the government's objectives.

Response: This limitation on the use of the direct funds, which tracks the SAMHSA Charitable Choice statute, is not meant to put an organization in the position of having to deny its religious perspectives on social issues, or in the position of having to reject government funds for its programs that are consistent with the purposes of the SAMHSA program. We recognize that while the government regards services like feeding the hungry or helping substance abusers return to their communities as social services or secular work, some organizations may regard these same activities as acts of mercy, spiritual service, fulfillment of

religious duty, good works, or the like. Therefore, providing social services that otherwise satisfy the requirements for funding under a government program—e.g., providing food for the hungry or helping substance abusers rejoin their communities—would constitute an appropriate use of funds, as long as government funds are not used to pay for inherently religious activities such as prayer and worship.

Comment: Several commenters recommended that the phrase "separate in time or location" be changed to "separate in time and location." According to the commenter, this would "prevent a religious provider from completing a service component, and then moving directly into a prayer service without notice or a break."

Response: The Department has decided to leave the final regulation as it was stated in the NPRM. Changing the regulation in the suggested way would place an undue burden on the providers and is not legally necessary. For example, such a rule would impose an unnecessarily harsh burden on small religious organizations, which may have access to only one location that is suitable for the provision of SAMHSA-funded services. As to the commenter's fear that a provider may move directly from the service component into a prayer service without notice or taking a break, it should be noted that the rule makes it clear that religious activity must be separated in time or location from the SAMHSA-funded services and participation by a beneficiary must be voluntary. We believe the rule adequately addresses this situation.

Equal Treatment for Religious Organizations. (Sec. 54.3 and 54a.3)

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 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.

Comments: Eleven commenters said that faith-based providers should be held to the same program standards that are applicable to other providers. Commenters felt that without such a standard, faith-based organizations would have an unfair advantage in providing services, and that the overall effect would be lower standards of care.

Response: These regulations are established in accordance with the law

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.