

Response: After carefully considering these concerns, the Department agrees that it is important to provide flexibility to the States in determining how to establish procedures for notice, referral, and provision of alternative services. As noted in the NPRM, the Department recognizes that a range of methods that fulfill these responsibilities is possible. Therefore, the Department does not seek to prescribe a single, inflexible referral and alternative provider system that States must adopt when States are the responsible units of government. The Department believes it is vital to any effective implementation of these provisions that SAMHSA, 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.

SAMHSA's Charitable Choice provisions apply to three different granting situations. The first is when the State itself is the recipient of SAPT block grant and PATH formula funds or when the States receive a discretionary grant from SAMHSA. Because of the broad range of State circumstances, coupled with the States' proven success in establishing systems to address such circumstances, States may develop referral and alternative service systems that are compatible with the treatment and prevention systems they administer, including reasonably defining and applying the terms "reasonably accessible," "a reasonable period of time," "comparable," "capacity," and "value that is not less than." SAMHSA will work with the States as they develop their implementation plans, providing technical assistance and opportunities for the States to discuss implementation approaches with one another. Allowing the States such discretion will not require the development of duplicate systems and will reduce regulatory and paperwork burden.

The second situation is when SAMHSA awards discretionary funds directly to local governments. The third is when SAMHSA awards discretionary funds directly to faith-based nonprofit organizations. The unit of government responsible for providing and funding alternative services in these situations is defined at section 54a.8 as follows:

"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."

Therefore, in the second circumstance, when SAMHSA awards discretionary funds to local governments, local governments are responsible for providing alternative services for program beneficiaries who may object to a faith-based program they are funding with SAMHSA funds. SAMHSA expects that local governments will work with the States and comply with the implementation approach adopted by their respective States.

In the third circumstance—when SAMHSA provides discretionary funds directly to faith-based organizations—SAMHSA will work with those organizations and consult with the States to ensure that program beneficiaries are provided alternative services in accordance with the statutory and regulatory requirements. As provided in the rule in section 54a.8(e), if there are no publicly funded alternatives available for the beneficiary, these grantees must contract with an alternative provider for the provision of such services, and the grantee may use the SAMHSA grant funds to finance the services. Should a grantee incur unanticipated additional costs as a result of providing alternative services beyond the discretionary grants awarded, the grantee may request reimbursement of those funds from SAMHSA, as the responsible unit of government, in the form of a request for supplemental funds to cover unanticipated costs. Based on the past experience of other HHS agencies in implementing similar provisions, objections to the religious character of program participants have been rare, which is perhaps unsurprising in light of the fact that beneficiaries may not be required to participate in any inherently religious activities as a condition of receiving services. Thus, SAMHSA expects that such an occurrence will be infrequent and only occur when the referral is to a private provider. While the specific circumstances will vary from jurisdiction to jurisdiction, we anticipate that in many cases, referrals will be made to programs that are funded, at least in part, from public funds, and therefore the burden of this requirement will not be substantial.

Comment: SAMHSA posed certain questions to commenters in the **Federal Register** Notice about what commenters thought constituted "reasonable period of time," "reasonably accessible services," and what the best

understanding of "services that * * * have a value that is not less than the value of [services that would otherwise be provided]."

Commenters provided the following input in response:

- With regard to "reasonable period of time," commenters suggested this would be anywhere from 24 hours after a request for alternative services to 4–6 weeks after such request. Most commenters reiterated that the States should determine what "a reasonable period of time" is.

- With regard to what "reasonably accessible services" are, commenters urged a focus on comparable level of care and reasonable accommodation. They noted that in large cities it may be easy to effect a referral to an alternative provider, but in smaller communities and rural areas, there may be only one existing licensed provider in the county.

- With regard to what constitutes equivalent services, commenters recommended that this phrase be interpreted to mean the value of the services themselves, without regard to the administrative costs involved.

Response: Although commenters made many good suggestions for defining these terms, the wide variety of responses to the questions SAMHSA raised underscores the need for State flexibility and the need for Departmental restraint in defining terms or regulating procedures for referral and provision of alternative services.

Comment: Commenters asked for clarification of "how these recipients would fund and deliver services from alternative providers." Another commenter offered the opinion that States would need to establish formal set-asides within discretionary grants to cover alternative placements.

Response: As indicated above, the regulation (consistent with the statute) requires the "responsible unit of government" to provide and fund alternative services. With regard to the suggestion for set-asides, Federal cost policies do not permit grantees to have set-aside/contingency dollars.

Comment: Several commenters were concerned about the "excessive burden on the treatment program to monitor the action of an individual who has not been admitted to its program and for whom the program is not receiving funding." In particular, several commenters noted "faith-based organizations should not bear the burden of securing and financing alternative services."

Response: SAMHSA considered these comments carefully in finalizing this rule, and has concluded that, when SAMHSA is the responsible unit of