

government (that awards discretionary funds directly to a religious organization), it will follow the rule that applies to the other granting circumstances—that is, the grantee (which may be the State, the local government, or in this instance, the religious organization) will use grant funds, if necessary, to cover the cost of securing and providing alternative services. As indicated earlier, SAMHSA anticipates 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: With regard to the program participant's responsibility to refer objecting program beneficiaries to alternative services, one commenter recommended that a "gateway" referral system that takes place before a beneficiary arrives at any provider be established and administered by the government. In the same vein, another commenter suggested that referral take place through "coordination that result[s] in referrals not requiring opt-outs."

Response: State and local governments have the flexibility to implement the requirement as they see fit so long as they meet all of the statutory and regulatory requirements. The Department is not mandating any one method.

Comment: Several commenters noted that the requirement to provide alternative services places additional burdens on State agencies, when the States are the responsible units of government, especially in rural areas. A faith-based organization may be selected as the service provider for a particular geographic area. Ensuring that an alternative service provider is available could require the State to make dual sets of services available, and thus increase costs. As a result, many of these commenters suggested that the requirement to provide alternative services is unreasonable. Some suggested that exceptions be permitted or that the requirement should be eliminated. Others noted that with this requirement, some States may choose not to contract out or provide community-based services, especially in rural areas.

Response: SAMHSA's Charitable Choice provisions impose the requirement to provide accessible and comparable assistance or services within a reasonable period of time to an individual who has an objection to the religious character of an organization. In the proposed rule, with the exception of requiring notice and referral, we did not expand or enhance the rights of

beneficiaries to assistance from an alternative provider, but simply clarified this statutory right. We also left substantial discretion to the States to define terms and carry out the statutory objectives. We are not free, however, to eliminate the statutory requirement to provide alternative services.

We also believe that commenters may have potentially overestimated the impact and potential burden of this requirement. Through the Department's Administration on Children and Families' TANF program, many faith-based organizations have a long history of contracting with State and local governments to address the secular purpose of providing assistance and services to needy families. In this situation, few beneficiaries have objected to the religious nature of these providers, which is perhaps unsurprising in light of the fact that, under TANF's Charitable Choice provisions, any inherently religious activities must be offered separately and on a voluntary basis. We also do not believe that States will decide not to contract out or provide community-based services in order to avoid this requirement. Since the statutory Charitable Choice requirements have applied since 2000, we believe that State and local governments are providing alternative services, in compliance with the law, and discovering and enhancing procedures that efficiently and effectively address this requirement.

Comment: Several provider commenters were concerned that faith-based programs receiving SAMHSA funding "should conform to principles of religious tolerance and inclusiveness."

Response: All recipients of SAMHSA funding are required to comply with Sections 54.7 and 54a.7, dealing with nondiscrimination toward program beneficiaries.

Comment: One State commenter was concerned about having to provide notice and alternative services to beneficiaries in SAMHSA-funded substance abuse prevention programs.

Response: SAMHSA appreciates this concern and recommends that grantees contact their State's substance abuse agency to secure information about alternative prevention services in the State. Many States' governors have used SAMHSA State Incentive Grants (SIGs) to coordinate their prevention systems, and, as a result, will have comprehensive information on prevention services available in particular areas.

Comment: One State offered implementation suggestions, including

that "the provision of alternative services could be addressed in contract language through a requirement that providers identify services available for referral." Several States noted that they already provide beneficiaries a choice of providers.

Response: The Department hopes that States will work with each other to identify effective implementation approaches, such as those noted above. We decline, however, to impose this particular requirement across the board.

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. It further requires the program participant to notify the responsible unit of government of all such referrals.

Comments: Several commenters recommended that notice of availability of alternative providers be given to all beneficiaries at the outset.

Response: Below is a model notice that grantees may wish to use:

Model Notice to Individuals Receiving Substance Abuse Services

No provider of substance abuse services receiving Federal funds from the U.S. Substance Abuse and Mental Health Services Administration, including this organization, may discriminate against you 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.

If you object to the religious character of this organization, Federal law gives you the right to a referral to another provider of substance abuse services to which you have no religious objection. The referral, and your receipt of alternative services, must occur within a reasonable period of time after you request them. The alternative provider must be accessible to you and have the capacity to provide substance abuse services. The services provided to you by the alternative provider must be of a value not less than the value of the services you would have received from this organization.

In addition, section 54.8(b) and 54a.8(b) of the regulation has been changed to add the word, "all" before "program beneficiaries" as follows:

Program participants, public agencies that refer individuals to designated programs, and the appropriate Federal, State, or local governments that administer designated programs or are program participants shall ensure that notice is provided to *all* program