

beneficiaries or prospective program beneficiaries of their rights under this section. (Emphasis added.)

SAMHSA assumes that providers will be able to provide such notice when program beneficiaries can understand their rights—which may be at the outset of services.

Comment: Other commenters recommended States should be given latitude to comply with the Notice requirements.

Response: The Department agrees. SAMHSA is providing a “model notice” to the States and other grantees, but is not requiring them to use this notice.

Comment: Another State commenter recommended that program participant notify the State “or responsible unit of government” of such referral.

Response: The Department will insert the suggested language, “or responsible unit of government” in 54.8(c)(4).

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 (program participant) must refer the individual, within a reasonable period of time, to another provider of substance abuse services. The requirements regarding referral are set out in sections 54.8(c) and 54a.8(c).

Comments: Several commenters felt that the government should require that a non-religious alternative be available. On this point, several asked whether a program beneficiary had to be referred to a religious provider if that is the only alternative.

Response: The proposed rule at sections 54.8 and 54a.8 provided that if the applicant or recipient objects to the religious character of a SAMHSA service provider, he or she is entitled to an alternative provider to which the individual has no religious objection. This is in keeping with the SAMHSA Charitable Choice provisions at sections 582(f) and 1955–(e) of the Public Health Service Act, 42 U.S.C. 290kk–1(f) and 300xx–65(e), which require States to provide the individual with assistance from “an alternative provider.” Hence, the alternative provider could, but does not have to be, a secular alternative (unless, of course, the beneficiary objects to the religious character of all faith-based providers). We have retained the wording of this provision.

Comment: One commenter wrote that the proposed rule does not require a secular alternative. Therefore, it lacks constitutionally required safeguards for beneficiaries.

Response: The Charitable Choice statute does not specify that the alternative provider needs to be a secular organization. We have chosen not to adopt this suggestion for three reasons. First, the purpose of the statute is to respect beneficiary choice, and some beneficiaries may prefer an alternative religious provider to an alternative secular provider. Second, many faith-based organizations deliver services in a secular manner. As a result, most beneficiaries will not object to the religious character of these organizations, and we do not want to exclude them as potential providers of service. Third, under the permissive statutory language that we have retained, State and local governments may offer a secular alternative. We believe States will implement this requirement in a manner consistent with their obligation to ensure compliance with the Establishment Clause of the First Amendment.

Comment: Others wanted a more general requirement that the government ensure the existence of at least one alternative service provider to protect the rights of beneficiaries; on this point, several States and providers noted the problem of the availability of alternative services in a rural setting. In contrast, one State stressed that the regulations “must not require the establishment of alternative providers where none currently exist.”

Response: The Department expects States, local governments and other grantees to abide by the statutory and regulatory requirements with respect to providing alternative services. We will work together to ensure compliance. In addition, we note that the statute prohibits grantees from using direct funding for inherently religious activities, and that any such activities must be voluntary. These requirements are sufficient to protect the religious freedom of beneficiaries.

Comment: Several commenters felt that the referral responsibility should be the government’s, rather than the religious organization’s (as a program participant).

Response: The Department is relying on the close cooperation among SAMHSA, States, providers and religious organizations to develop referral systems that are based primarily on shared responsibility. Religious organizations can look to the responsible unit of government for assistance, including access to SAMHSA’s treatment facility locator at <http://findtreatment.samhsa.gov> to identify providers in the surrounding area. See the regulations for further detail.

Comment: Several commenters, mainly providers, underscored the importance of ensuring that the confidentiality protections, including those provided in 42 CFR part 2 and HIPAA, are complied with; others were concerned, however, that confidentiality rules would block information sharing between religious organizations and secular providers.

Response: The SAMHSA Charitable Choice laws do not override the confidentiality laws of 42 CFR part 2 and HIPAA. Therefore, the final regulations will contain the same provision from the NPRM in section 54.8(c)(3), as follows:

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”).

Comment: Two State commenters were concerned that SAMHSA’s Charitable Choice provisions confer a “special entitlement” to certain beneficiaries to services, similar to that of the “priority” set-aside populations currently listed in SAPT block grant law.

Response: With regard to a “special entitlement” being created, SAMHSA agrees with a State commenter who stated that “[T]he States can assure that steps can and will be taken to assure protection of these rights without granting religious objectors more extensive rights than those of the general population of beneficiaries”.
* * * [Existing protections are sufficient.]”

Fiscal Accountability. (Sec. 54.10 and 54a.10)

The fiscal accountability section of the regulation provided that religious organizations receiving SAMHSA funding would be held to the same fiscal accountability requirements as other organizations, including generally accepted auditing and accounting principles. Faith-based organizations would also be required to keep any federal funds in a separate account from non-federal funds. Only the segregated Federal funds are subject to audit by the government under the SAMHSA program.

Comment: The Department received 13 comments on the issue of fiscal accountability. All of the comments received on this section supported segregation of funds and strict adherence to Federal audit and cost principles and requirements. There was some concern about the ability of faith-based organizations to maintain separate accounts.