

Public Health Service, HHS

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APPENDIX TO PART 54A—MODEL NOTICE TO INDIVIDUALS RECEIVING SUBSTANCE ABUSE SERVICES.

AUTHORITY: 42 U.S.C. 300x-65, and 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 290aa, *et seq.*

SOURCE: 68 FR 56446, Sept. 30, 2003, unless otherwise noted.

§ 54a.1 Scope.

These provisions apply only to funds provided directly to pay for substance abuse prevention and treatment services under Title V of the Public Health Service Act, 42 U.S.C. 290aa, *et seq.*, which are administered by the Substance Abuse and Mental Health Services Administration. This part does not apply to direct funding under any such authorities for only mental health services or for certain infrastructure and technical assistance activities, such as cooperative agreements for technical assistance centers, that do not provide substance abuse services to clients. This part implements the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

§ 54a.2 Definitions.

(a) *Applicable program* means the programs authorized under Title V of the PHS Act, 42 U.S.C. 290aa, *et seq.*, for the provision of substance abuse prevention and or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance under an applicable program.

(e) *SAMHSA* means the Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice* provisions means the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

(g) *Direct funding* or *Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties under this part as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54a.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of the organization's religious character or affiliation.

§ 54a.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or

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local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54a.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54a.6 Employment practices.

(a) The participation of a religious organization in or its receipt of funds from an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

(b) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

§ 54a.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary or prospective program 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.

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§ 54a.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in paragraphs (b) through (d) of this section. 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.

(b) *Notice.* Program participants that refer an individual to alternative providers, and the appropriate Federal, State, or local governments that administer the applicable programs, shall ensure that notice of the individual's rights to services from an alternative provider is provided to all program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section. A model notice is set out in appendix A to this part.

(c) *Referral to services from an alternative provider.* If a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider.

(1) When the State or local government is the responsible unit of government, the State shall have a system in place to ensure that such referrals are made. That system shall ensure that the following occurs: