

**SAMHSA'S CHARITABLE CHOICE PROVISIONS:
FREQUENTLY ASKED QUESTIONS**

1. What rights do religious organizations have under Charitable Choice - specifically, what does "maintain their religious character" mean?

As the regulation states, among other things, religious organizations that receive SAMHSA funding do not have to remove religious art, icons, scriptures, or other symbols. Per the regulation, a participating religious organization 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." For example, such organizations can keep their religious name, their board members can be selected on a religious basis, and their mission statement can include religious references. (See section 54.5 and related preamble notes.)

2. Who will determine whether alternate services are "of equal value" and "accessible?"

Under SAMHSA's Charitable Choice regulations, the States may "apply and define the terms 'reasonably accessible,' 'a reasonable period of time,' 'comparable,' 'capacity,' and 'value that is not less than.'"

3. Is AA considered a religious program?

As noted in the Preamble (page 56432), "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 received direct SAMHSA funding."

(NOTE: The New York Court of Appeals and the United States Court of Appeals for the Second Circuit have held that, in the context of an Establishment Clause case, A.A. is a religion and that adherence to the Twelve Steps utilized by A.A. involves religious activity. However, this decision is binding only within the Second Circuit - New York, Connecticut, and Vermont.)

4. Can faith-based organizations hire only those of their own faith?

Under SAMHSA's Charitable Choice regulations and statutes, a faith-based organization receiving direct funding maintains its Title VII exemption. Additionally, the preamble of the SAMHSA Charitable Choice regulation explains that "where a religious entity establishes that its exercise of religion would be substantially burdened [by not being able to maintain their Civil Rights exemption that allows them to hire of their own faith], the Religious Freedom Restoration Act (RFRA) supercedes those statutory requirements." The religious entity must maintain documentation to certify that it would be substantially burdened and provide such documentation to SAMHSA upon request. States and SAMHSA staff should read the regulation section 54.6 and its related preamble section carefully.

5. Does the Notice (of the right to alternative services) need to be provided to all program beneficiaries - even those seeking services from non-religious providers? Or does Notice only have to be provided to beneficiaries by religious providers?

The Notice requirement applies only to those organizations that identify themselves as religious or faith-based because these provisions only apply to the instance in which the program beneficiary is to receive services from religious organizations.

6. What happens when a beneficiary objects to non-religious providers' services?

Nothing. As noted above, these provisions apply only to the instance in which the program beneficiary is to receive services from a religious provider.

7. Should States provide Charitable Choice training to their religious providers? To all providers?

We advise States to consider providing two types of training on Charitable Choice: (1) a general overview for all providers and, (2) a more thorough training for faith-based organizations.

8. How should religious providers notify the State of referrals?

Each State needs to determine this process according to its own systems and needs. However, a State does need to provide the number of referrals made in the State to SAMHSA as part of its checklist/description of activities it has taken to comply with these provisions.

9. What about referrals in rural areas, where alternate providers simply don't exist?

SAMHSA appreciates concerns raised about the problem of availability of alternative services in rural areas and has sought to address them by providing significant flexibility to States in implementing these requirements.

10. Does Charitable Choice confer a special entitlement on beneficiaries who request alternative services?

No. Although a State must see to it that alternative services are provided "within a reasonable period of time" after the referral is made, as defined by the State, we anticipate that these beneficiaries may be placed, if necessary, on waiting lists along with others seeking services.

11. Who determines whether faith-based training for substance abuse providers is comparable to that provided by non-religious organizations (section 54.13)?

The State.