

SUPPORTING STATEMENT

Regulations to Implement SAMHSA's Charitable Choice Statutory Provisions: 42 CFR Parts 54 and 54a

1. Circumstances of Information Collection

SAMHSA's two Charitable Choice provisions [Sections 581-584 and Section 1955 of the Public Health Service (PHS) Act, 42 USC 290kk and 42 USC 300x-65 respectively] were enacted in late 2000. These nearly-identical provisions set forth various rights and responsibilities for governments, providers and recipients, with the overall goal of enabling religious organizations to maintain their religious character. They apply to two SAMHSA formula-grant programs - SAMHSA's Substance Abuse Prevention and Treatment (SAPT) block grant and its Projects for Assistance in Transition from Homelessness (PATH) program -and they apply to SAMHSA discretionary programs that fund "activities to prevent or treat substance abuse."

On September 30, 2003, SAMHSA published regulations implementing these provisions. The regulations ensure that SAMHSA substance abuse programs are neutral with regard to the religious character of participating organizations and establish clearly the proper uses to which funds may be put and the conditions for receipt of funding. SAMHSA also provided a model "Notice to Individuals Receiving Substance Abuse Services" for use by religious organizations to inform program beneficiaries or potential beneficiaries who object to the religious character of that program participant that they have the right to referral to an alternate provider.

In most instances the regulations seek to provide maximum flexibility to the states and to religious organizations that are "program participants" in implementing these provisions. In that vein, duly-designated officials from the States and from all organizations applying for designated discretionary grant programs will sign an assurance that they will comply with these provisions, as applicable.

The regulations clarify how religious organizations receiving SAMHSA substance abuse prevention and treatment funds under the designated programs must proceed to implement the charitable choice legislative provisions. Specifically, SAMHSA requests approval of renewal of the following information collection requirements of the proposed rule:

Part 54 -States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness Grants

Reporting Requirements

42 CFR 54.8(c)(4)

Requires that a program participant shall notify the State of a referral of a program beneficiary to an alternative provider

42 CFR 54.8(e)

Requires that PATH grantees include in their annual report to SAMHSA a description of

activities undertaken to comply with 42 CFR Part 54

Disclosure Requirements

42 CFR 54.8(b)

Requires that notice is provided to program beneficiaries or prospective beneficiaries of their rights to a referral to an alternative service provider if they object to the religious character of a specific program participant

Recordkeeping Requirements

42 CFR 54.6(b)

Requires that a program participant that believes the requirements of 42 USC 300x-57 or 42 USC 290cc-33(a)(2) would impose a significant burden must sign a certification to that effect and maintain documentation in support of the certification (to be available to SAMHSA upon request)

In addition, 42 CFR Part 96 will be modified to include the following reporting requirement:

42 CFR 96. 122(f)(5)(v)

Requires that the SAPT Block Grant annual report include a description of the activities the State has undertaken to comply with 42 CFR Part 54

Part 54a -States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services

Reporting Requirements

42 CFR 54a.8(c)(1)(iv)

Requires that a program participant shall notify the responsible unit of government (i.e., State or local) of a referral of a program beneficiary to an alternative provider

42 CFR 54a.8(d)

When SAMHSA is the responsible unit of government, program participants shall notify SAMHSA of referrals as part of regular grant reporting

Disclosure Requirements

42 CFR 54a.8(b)

Requires that notice is provided to program beneficiaries or prospective beneficiaries of

their rights to a referral to an alternative service provider if they object to the religious character of a specific program participant

2. Purpose and Use of Information

The documentation in support of the burden imposed by the requirements of 42 use 300x-57(a)(2) or 42 use 290cc-33(a)(2) will be available for review by SAMHSA. The information that program participants must disclose to program beneficiaries or potential beneficiaries will inform them that if they object to the religious character of that participant they have a right to receive services from an alternate service provider within a reasonable period of time. Information reported to SAMHSA, State or local governments about referrals will provide them with information about the extent to which beneficiaries are requesting service from alternate providers. The reports by States and affected religious organizations on activities undertaken to implement the regulations, including 2009 State responses to SAMHSA about their implementation of Charitable Choice serve to document what is done and how it is done and will further understanding of the implementation of the charitable choice provisions.

In addition, in 2004, SAMHSA's Center for Substance Abuse Treatment developed a Charitable Choice checklist on States' implementation of Charitable Choice (see Item 12 for further information). Also, PATH participants were required to sign an agreement indicating that the State or Territory will comply with Charitable Choice regulations.

3. Use of Information Technology

Initially, all reporting to SAMHSA was done in hard copy. However, as it relates to the Substance Abuse Prevention and Treatment (SAPT) Block Grant, States are now given the option to report on this requirement via the web Block Grant application system. However, the Department of Health and Human Services, through the Office of the Assistant Secretary for Management and Budget, has continued discussions on a department-wide strategy for compliance with the requirements of the Government Paperwork Elimination Act (GPEA). Operating Divisions of the Department (e.g., SAMHSA) are actively engaged in review of the following issues related to compliance with GPEA: digital signature software, PKI, and web site identification. Both grant and contract activities not currently covered will be covered; SAMHSA expects to continue making available a fully electronic option of the SAPT Block Grant application for appropriate information collections to comply with the requirements of the GPEA.

4. Efforts to Identify Duplication

This initiative resulted from changes to SAMHSA's authorizing legislation in 2000. There is no possibility of duplication.

5. Involvement of Small Entities

Many of the organizations to which these requirements apply are small businesses. Every effort has been made to assure that the reporting and disclosure requirements allow maximum flexibility in implementation and impose minimum burden on them.

6. Consequences If Information Collected Less Frequently

In as much as information is disclosed to new patients and reports of referrals to alternate providers are generated on an "as occurs" basis, a discussion of less frequent information collection is not applicable to these provisions. Less frequent disclosure would not provide each patient with notice. Annual reports on activities to implement the regulations are also considered the minimum necessary so that SAMHSA can be assured that entities are properly fulfilling their obligations.

7. Consistency With the Guidelines in 5CFR 1320.S(d)(2)

This data collection complies with 5 CFR 1320.5.

8. Consultation Outside the Agency

The notice required by 5 CFR1320.8(d) was published in the *Federal Register* on October 16, 2009 (74 FR 53262). No comments were received in response to this notice.

SAMHSA reviewed 2009 compliance reports submitted by the State Substance Abuse agencies on their implementation of the Charitable Choice provisions. Key findings include the following:

- 35 States use existing referral systems to provide referrals to alternative services (6 States developed a specific referral system for Charitable Choice).
- Only 7 States reported making referrals to alternative services – California with eight referrals, Illinois with 11 referrals, Maine with eight referrals, Michigan with 36 referrals, New Mexico with 143 referrals, Pennsylvania with four referrals, and Washington State with 264 referrals.
- 35 States use the Model Notice provided by SAMHSA, with 29 reporting that they had disseminated the Notice to religious organizations that are providers
- 14 States reported that they did not contract nor plan to contract with faith-based organizations

9. Payment to Respondents

No payments or gifts will be provided to respondents.

10. Assurance of Confidentiality

No assurance of confidentiality is being provided. No personal information is being sought by the Charitable Choice implementation. Since the assurance will be signed by the appropriate representative of the organizations and will be filed with the grant applications, a Privacy Act System of Records is not being established.

11. Questions of a Sensitive Nature

Charitable Choice protects an entity's right to retain its religious character. None of the information collection activities for which approval is sought asks about specific organizational beliefs or individuals.

12. Estimates of Annualized Hour Burden

Based on input from States' completion of the "Charitable Choice checklist" now part of the SAPT Block grant application, SAMHSA is able to more accurately estimate the burden for SAPT program participants and beneficiaries. Based on those revisions, SAMHSA also revised the PATH burden estimates. SAMHSA will have input from State PATH checklists that will be implemented in FY 2012. The hourly burden estimates are based on information from the SAPT checklists as well as the time for similar activities in substance abuse programs, and hourly wage information is based on staff familiarity with similar requirements for these programs.

Annual Burden Estimates

42 CFR Citation and Purpose	No. of respondents	Responses per respondent	Total Responses	Hours per response	Total hours	Hourly Wage	Total Cost
Part 54--States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness							
Reporting							
96.122(f)(5) Annual report of activities the State undertook to comply with 42 CFR Part 54	60	1	60	1	60	\$25	\$1,500
54.8(c)(4) Total number of referrals to alternative service providers reported by program participants to States (respondents).							
SAPT BG	7	68(avg.)	476	1	476	\$25	\$11,900
PATH	10	5	50	1	50	\$25	\$ 1,250
54.8 (e) Annual report	56	1	56	1	56	\$25	\$1,400

by PATH grantees on activities undertaken to comply with 42 CFR Part 54							
Disclosure							
54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider							
SAPT BG	60	1	60	.05	3	\$25	\$75
PATH	56	1	56	.05	3	\$25	\$75
Recordkeeping							
54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x-57 or 42 U.S.C. 290cc-33(a)(2)	60	1	60	1	60	\$25	\$ 1,500
Part 54—Subtotal	116	-	818	-	708		\$17,700
Part 54a--States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services							
Reporting							
54a.8(c)(1)(iv) Program participant notification to State or local government of a referral to an alternative provider	25	4	100	.083	8	\$25	\$200
54a(8)(d) Program participant notification to SAMHSA of referrals	20	2	40	.25	10	\$25	\$250
Disclosure							
54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	1,460	1	1,460	1	1460	\$25	\$36,500
Part 54a -- Subtotal	1,505		1,600		1,478		\$36,950
TOTAL	1,621		2,418	1	2,186		\$54,650

13. Estimates of Annualized Cost Burden to Respondents

SAMHSA's belief that start-up and operational costs to respondents will be minimal, has been borne out. Most States have provided training to nonprofit religious organizations about Charitable Choice recordkeeping and have established simple systems to keep track of the number of referrals to alternative services and to document efforts to ensure individual contact with the alternative provider. States have also developed procedures for implementing charitable choice among their SAPT Block Grant sub-recipients and for informing those organizations of these requirements.

a. Start-up costs:

Most States have established and distributed guidance for their grantees with regard to disclosure of beneficiary rights, referrals, and reporting, and have incorporated the information collection requirements of these regulations into other funding documents for their own grantees. SAMHSA's initial estimates of \$29,000 in start-up costs for the block grant (approximately 10 hours per primary grantee in these programs (N=116; 56 in PATH and 60 in the SAPT BG) to develop and document their required systems (hourly wage of \$25) appear to be sound. Although SAMHSA has not surveyed program participants in applicable discretionary grant programs on the costs of establishing a simple system to identify and report referrals, SAMHSA still estimates it will take approximately 5 hours at \$25/hr per provider (\$125 each for 100 providers), for a total of \$12,500.

b. Operation and maintenance costs:

In subsequent years, SAMHSA continues to project that States will invest an average of 5 hours per year to review, update and maintain these specifications, for an annual cost of \$14,500. In subsequent years, SAMHSA estimates that it will take 100 program participants approximately 2 hours @ \$25/hr or \$50 per program participant to review, update and maintain their systems, for a total cost of \$5,000.

With regard to program beneficiary notices, SAMHSA estimates the costs for copying (\$0.07 per copy) to be approximately \$392.28 for 5,604 beneficiaries (100 programs in the discretionary grants program with an average of 3 beneficiaries each; 60 programs with an average of 1 beneficiary each in the SAPT BG program; and, 56 grantees in the PATH program with an average of 1 beneficiaries each).

Thus, the total estimated costs for system development and operation/maintenance associated with the guidance information collection requirements was approximately \$63,865 for the first year and \$56,242 per year in later years, for an annual average over the first 3 years of \$58,783.

14. Estimates of Annualized Cost to the Government

The new estimated annual cost to the Federal government for the Charitable Choice provision implementation is approximately \$4,293. This estimate is based on approximately 5 percent of a full-time GS 12, Grade 5 employee (\$85,855 annual salary).

15. Changes in Burden

Currently there are 2,354 total burden hours in the OMB inventory. SAMHSA is requesting 2,186. The decrease of 168 hours is due to an adjustment based on actual burden data for the SAPT Block Grant and more realistic estimates for the PATH and discretionary programs derived from what was learned from the SAPT Block Grant data.

16. Time Schedule. Publication and Analysis Plans

There are no plans to publish information collected for statistical use.

17. Display of Expiration Date

Not applicable. There are no information collection forms associated with these regulations.

18. Exceptions to Certification Statement

This collection of information involves no exceptions to the Certification for Paperwork Reduction Act Submissions.