

SUPPORTING STATEMENT

Regulations to Implement the Substance Abuse and Mental Health Services Administration's (SAMHSA) Charitable Choice Statutory Provisions: 42 CFR Parts 54 and 54a

1. Circumstances of Information Collection

The Substance Abuse and Mental Health Services Administration (SAMHSA) is seeking Office of Management and Budget (OMB) approval for an extension to the Charitable Choice Statutory Provisions: 42 CFR Parts 54 and 54a. These provisions are approved under OMB No. 0930-0242, which expires on 09/30/2022. 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. The provisions apply to two SAMHSA formula-grant programs: (1) Substance Abuse Prevention and Treatment Block Grant (SABG); and (2) Projects for Assistance in Transition from Homelessness (PATH) program. In addition, the provisions apply to SAMHSA discretionary programs that fund "activities to prevent or treat substance use."

On September 30, 2003, SAMHSA published regulations implementing these provisions. The regulations ensure that SAMHSA substance use programs are neutral regarding the religious character of participating organizations and clearly establish the proper use of funds and 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 of the right to referral to an alternate provider. This information collection has been approved without changes since 2010.

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. Duly designated officials from the states reapplying for designated grant programs will sign funding agreements, certifications, and assurances to comply with these provisions as applicable.

The regulations clarify how religious organizations receiving SAMHSA SABG funds must proceed to implement the Charitable Choice legislative provisions. Specifically, SAMHSA requests approval for renewal of the following information collection requirements of the proposed rule:

Part 54 - States Receiving SABGs 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 was modified to include the following reporting requirement:

42 CFR 96. 122(f)(5)(v) Requires that the SABG 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 of the right to object to the religious character of that participant and receipt of services from an alternate service provider within a reasonable timeframe. Information reported to SAMHSA, state or local governments about referrals will provide 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 serve to document what is done, how it is done, and 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.

No changes are being made to the regulations or burden hours.

3. Use of Information Technology

Initially, all reporting to SAMHSA was done in hard copy. However, as it relates to the SABG, states are now given the option to report on this requirement via the Web Block Grant Application System (WebBGAS). However, the Department of Health and Human Services, through the Office of the Chief Information Officer, has continued discussions on a department-wide strategy for compliance with the requirements of the Government Paperwork Elimination Act (GPEA). Through the WebBGAS internet portal SAMHSA continues to make available a fully electronic option of the SABG and PATH applications 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 the reporting and disclosure requirements allow maximum flexibility in implementation and impose minimum burden on them.

6. Consequences if Information is 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 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 January 18, 2022 (87 FR 2629). No comments were received in response to this notice.

SAMHSA reviewed fiscal year 2019 compliance reports submitted by the State Substance Abuse Agencies on their implementation of the Charitable Choice provisions. Key findings include the following:

- Twenty-six states use existing referral systems to provide referrals to alternative services (five states developed a specific referral system for Charitable Choice).
- Only four states reported making referrals to alternative services: (1) California with 16 referrals; (2) Illinois with 211 referrals; (3) Ohio with 19 referrals; and (4) Nebraska with one referral.
- Twenty-five states use the Model Notice provided by SAMHSA, with 21 reporting dissemination of the notice to religious provider organizations.
- Six states reported that faith-based organizations were not contracted nor were there plans 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 SABG application, SAMHSA can more accurately estimate the burden for substance use disorder (SUD) program participants and beneficiaries. The hourly burden estimates are based on information from the SABG annual report checklists as well as the time for similar activities in SUD prevention and treatment programs. In addition, 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 SABG 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).	5	23(avg.)	135	1	135	\$25	\$3,375

SABG PATH	10	5	50	1	50	\$25	\$1,250
54.8 (e) Annual report by PATH grantees on activities undertaken to comply with 42 CFR Part 54	56	1	56	1	56	\$25	\$1,400
Disclosure							
54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider							
SABG	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	115	-	477	-	367		\$9,175
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	1,460	\$25	\$36,500
Part 54a -- Subtotal	1,505		1,600		1,478		\$36,950

TOTAL	1,620		2,077	1	1,845		\$46,125
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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 SABG sub-recipients and for informing those organizations of these requirements.

a. Start-up costs:

Most states have established and distributed guidance for their grantees regarding 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 SABG) 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 five hours at a rate of \$25 per hour per provider (e.g., \$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 five 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 two hours at a rate of \$25 per hour 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 (e.g., \$0.07 per copy) to be approximately \$392.28 for 5,604 beneficiaries (e.g., One hundred programs in the discretionary grants program with an average of three beneficiaries each; 60 programs with an average of one beneficiary each in the SABG program; and, 56 grantees in the PATH program with an average of one beneficiary 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 three 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 \$4,941. This estimate is based on approximately five percent of a full-time GS 12, Grade 5 employee (\$98,827 annual salary).

15. Changes in Burden

There is no burden change.

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.