

(c) A submitter may withdraw its request for modification within 10 business days following its receipt and receive a refund of the fee.

(d) If the Secretary determines that a change in the amount of a fee is appropriate, the Department will issue a notice of proposed rulemaking in the FEDERAL REGISTER to announce the proposed amount.

[51 FR 39376, Oct. 28, 1986]

**PART 54—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES RECEIVING SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANTS AND/OR PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS GRANTS**

Sec.

- 54.1 Scope.
- 54.2 Definitions.
- 54.3 Nondiscrimination against religious organizations.
- 54.4 Religious activities.
- 54.5 Religious character and independence.
- 54.6 Employment practices.
- 54.7 Nondiscrimination requirement.
- 54.8 Right to services from an alternative provider.
- 54.9 Assurances and State oversight of the Charitable Choice requirements.
- 54.10 Fiscal accountability.
- 54.11 Effects on State and local funds.
- 54.12 Treatment of intermediate organizations.
- 54.13 Educational requirements for personnel in drug treatment programs.

AUTHORITY: 42 U.S.C. 300x-65, *et seq.*, 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 300x-21, *et seq.*, 42 U.S.C. 290cc-21, *et seq.*, and 42 U.S.C. 2000bb, *et seq.*

SOURCE: 68 FR 56444, Sept. 30, 2003, unless otherwise noted.

**§ 54.1 Scope.**

These provisions apply only to funds provided directly to pay for substance abuse prevention and treatment services under 42 U.S.C. 300x-21 *et seq.*, and 42 U.S.C. 290cc-21 to 290cc-35. This part does not apply to direct funding under any such authorities for activities that do not involve the provision of substance abuse services, such as for infrastructure activities authorized under Section 1971 of the PHS Act, 42 U.S.C. 300y, and for technical assistance ac-

tivities. This part implements the SAMHSA Charitable Choice provisions, 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

**§ 54.2 Definitions.**

(a) *Applicable program* means the programs authorized under:

(1) The Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x-66, and

(2) The Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc-21 to 290cc-35 insofar as they fund 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 U.S. 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.

**§ 54.3 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

#### § 54.4

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 non-profit 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 religion or the organization's religious character or affiliation.

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

#### § 54.5 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 mem-

#### 42 CFR Ch. I (10–1–14 Edition)

bers on a religious basis, and include religious references in its organization's mission statements and other governing documents.

#### § 54.6 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) To the extent that 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) precludes a program participant from employing individuals of a particular religion to perform work connected with the carrying on of its activities, those provisions do not apply if such program participant is a religious corporation, association, educational institution, or society and can demonstrate that its religious exercise would be substantially burdened by application of these religious nondiscrimination requirements to its employment practices in the program or activity at issue. In order to make this demonstration, the program participant must certify: that it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise; that it makes employment decisions on a religious basis in analogous programs; that the grant would materially affect its ability to provide the type of services in question; and that providing the services in question is expressive of its values or mission. The organization must maintain documentation to support these determinations and must make such documentation available to SAMHSA upon request.

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

(d) The phrases “with respect to the employment,” “individuals of a particular religion,” and “religious corporation, association, educational institution, or society” shall have the same meaning as those terms have under section 702 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a).