

(b) *Formula and block grants.* This part does not apply to non-discretionary and block grant programs governed by the SAMHSA Charitable Choice regulations found at 42 CFR part 54, or the Temporary Assistance for Needy Families (TANF) Charitable Choice regulations at 45 CFR part 260. Block grants governed by the CSBG Charitable Choice regulations at 45 CFR part 1050 are not subject to this part, with the exception that §§ 87.1 and 87.3(i) through (l) do apply to such CSBG block grants. This part is not applicable to Child Care and Development Block Grants governed by 45 CFR part 98.

#### § 87.3 Grants.

(a) Faith-based or religious organizations are eligible, on the same basis as any other organization, to participate in any HHS awarding agency program for which they are otherwise eligible. Neither the HHS awarding agency, nor any State or local government and other pass-through entity receiving funds under any HHS awarding agency program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, "program" refers to activities supported by discretionary, formula or block grants.

(b) Organizations that apply for or receive direct financial assistance from an HHS awarding agency may not support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), as part of the programs or services funded with direct financial assistance from the HHS awarding agency, or in any other manner prohibited by law. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the HHS awarding agency, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part re-

stricts HHS's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A faith-based or religious organization that participates in HHS awarding agency-funded programs or services 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, provided that it does not use direct financial assistance from an HHS awarding agency (including through a prime or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). A faith-based or religious organization may use space in its facilities to provide programs or services funded with financial assistance from the HHS awarding agency without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based or religious organization that receives financial assistance from the HHS awarding agency retains its 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 in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities.

(d) An organization that participates in any programs funded by financial assistance from an HHS awarding agency shall not, in providing services or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to

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accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by an HHS awarding agency or a State or local government in administering financial assistance from the HHS awarding agency shall require only faith-based or religious organizations to provide assurances that they will not use monies or property for explicitly religious activities. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations. All organizations that participate in HHS awarding agency programs, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of HHS awarding agency-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the HHS awarding agency or a State or local government in administering financial assistance from the HHS awarding agency shall disqualify faith-based or religious organizations from participating in the HHS awarding agency's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(f) A faith-based or religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the faith-based or religious organization receives direct or indirect financial assistance from an HHS awarding agency. Some HHS awarding agency programs, however, contain independent statutory provisions requiring that all recipients agree not to discriminate in employment on the basis of religion. Accordingly, recipients should consult with the appropriate HHS awarding agency program

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office if they have questions about the scope of any applicable requirement.

(g) In general, the HHS awarding agency does not require that a recipient, including a faith-based or religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under HHS awarding agency programs. Many grant programs, however, do require an organization to be a "non-profit organization" in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate HHS awarding agency program office to determine the scope of any applicable requirements. In HHS awarding agency programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (g)(1) through (3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(h) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to

supplement HHS awarding agency-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this section apply irrespective of whether such funds are commingled with Federal funds or segregated.

(i)(1) Faith-based or religious organizations providing social services in the United States to beneficiaries under an HHS program that is supported by direct Federal financial assistance must give written notice to beneficiaries or prospective beneficiaries of certain protections. This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such programs. Notice must be given in a manner prescribed by the HHS awarding agency. This notice must state that:

(i) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(iv) If a beneficiary or prospective beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection; however, the organization cannot guarantee that in every instance an alternative provider will be available; and

(v) Beneficiaries or prospective beneficiaries may report violations of these

protections, including any denials of services or benefits that violate these regulations, by contacting or filing a written complaint with the HHS awarding entity.

(2) When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

(j) If a beneficiary or prospective beneficiary of a social service program supported by the HHS awarding agency objects to the religious character of an organization that provides services in the United States under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection. A referral may be made to another faith-based or religious organization, if the beneficiary has no objection to that provider. But if the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider. Except for services provided by telephone, internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional beneficiaries.

(k) When the organization determines that it is unable to identify an alternative provider, the organization must promptly notify the prime recipient entity from which it has received funds. The prime recipient of Federal financial assistance must notify the HHS awarding agency when a sub-recipient is unable to identify an alternative provider. If the organization is successful in making a referral, it shall maintain a record of the referral.

(l) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation, or

lack thereof, of a recipient organization.

(m) If a pass-through entity, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the pass-through entity must ensure compliance with the provisions of this part and any implementing regulations or guidance by the sub-recipient. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

## PART 88—PROTECTING STATUTORY CONSCIENCE RIGHTS IN HEALTH CARE; DELEGATIONS OF AUTHORITY

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- 88.1 Purpose.
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APPENDIX A TO PART 88—MODEL TEXT: NOTICE OF RIGHTS UNDER FEDERAL CONSCIENCE AND ANTI-DISCRIMINATION LAWS

AUTHORITY: 42 U.S.C. 300a–7 (the Church Amendments); 42 U.S.C. 238n (Coats-Snowe Amendment); the Weldon Amendment (*e.g.*, Pub. L. 115–245, Div. B, sec. 507(d)); 42 U.S.C. 18113 (Section 1553 of the Affordable Care Act); Medicare Advantage (*e.g.*, Pub. L. 115–245, Div. B, sec. 209); the Helms, Biden, 1978, and 1985 Amendments, 22 U.S.C. 2151b(f) (*e.g.*, Pub. L. 116–6, Div. F, sec. 7018); 22 U.S.C. 7631(d); 29 U.S.C. 669(a)(5); 42 U.S.C. 300gg–92; 42 U.S.C. 1302(a); 42 U.S.C. 18041(a) (Section 1321 of the Affordable Care Act); 42 U.S.C. 18081 (Section 1411 of the Affordable Care Act); 42 U.S.C. 18023 (Section 1303 of the Affordable Care Act); 26 U.S.C. 5000A(d)(2); 42 U.S.C. 18031; 42 U.S.C. 280g–1(d); 42 U.S.C. 290bb–36(f); 42 U.S.C. 1315; 42 U.S.C. 1315a; 42 U.S.C. 1320a–1; 42 U.S.C. 1320c–11; 42 U.S.C.

1395cc(f); 42 U.S.C. 1395i–3; 42 U.S.C. 1395i–5; 42 U.S.C. 1395w–22(j)(3)(B); 42 U.S.C. 1395w–26; 42 U.S.C. 1395w–27; 42 U.S.C. 1395x; 42 U.S.C. 1396a; 42 U.S.C. 1396a(w)(3); 42 U.S.C. 1396f; 42 U.S.C. 1396r; 42 U.S.C. 1396s(c)(2)(B)(ii); 42 U.S.C. 1396u–2(b)(3)(B); 42 U.S.C. 1397j–1(b); 42 U.S.C. 5106i(a); 42 U.S.C. 14406; 5 U.S.C. 301; 40 U.S.C. 121(c); 42 U.S.C. 263a(f)(1)(E); 45 CFR parts 75 and 96; 48 CFR chapter 1; 48 CFR parts 300 thru 370; 2 CFR part 376.

SOURCE: 84 FR 23263, May 21, 2019, unless otherwise noted.

### § 88.1 Purpose.

The purpose of this part is to provide for the implementation and enforcement of the Federal conscience and anti-discrimination laws listed in § 88.3. Such laws, for example, protect the rights of individuals, entities, and health care entities to refuse to perform, assist in the performance of, or undergo certain health care services or research activities to which they may object for religious, moral, ethical, or other reasons. Such laws also protect patients from being subjected to certain health care or services over their conscientious objection. Consistent with their objective to protect the conscience and associated anti-discrimination rights of individuals, entities, and health care entities, the statutory provisions and the regulatory provisions contained in this part are to be interpreted and implemented broadly to effectuate their protective purposes.

### § 88.2 Definitions.

For the purposes of this part:

*Assist in the performance* means to take an action that has a specific, reasonable, and articulable connection to furthering a procedure or a part of a health service program or research activity undertaken by or with another person or entity. This may include counseling, referral, training, or otherwise making arrangements for the procedure or a part of a health service program or research activity, depending on whether aid is provided by such actions.

*Department* means the Department of Health and Human Services and any component thereof.

*Discriminate* or *discrimination* includes, as applicable to, and to the extent permitted by, the applicable statute: