

POLICY AND PROCEDURE

<u>POLICY TITLE:</u> DSAMH Charitable Choice Policy/Religious Organizations	<u>POLICY #:</u> 07
<u>PREPARED BY:</u> DSAMH Policy Committee	<u>DATE ISSUED:</u>
<u>RELATING POLICIES:</u>	<u>REFERENCE:</u> 42 CFR 54
<u>DATES REVIEWED:</u> 07/19/19	<u>DATES REVISED:</u>
<u>APPROVED BY:</u>	<u>NOTES:</u>

I. **PURPOSE:** The purpose of this policy is to highlight Charitable Choice requirements of 42 CFR 54 for DSAMH and its Applicable programs. This policy does not eliminate other related federal, state, or regulatory requirements required for specific programs and services.

II. **POLICY STATEMENT:** It is the policy of the Division of Substance Abuse and Mental Health (DSAMH) to require that all contracted providers of services adhere to all requirements of the Code of Federal Regulations pertaining to Charitable Choice (42 CFR 54). 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. Religious organizations contracting with or holding a sub-contract must comply with all Federal Regulations pertaining to Charitable Choice. Providers will be required to adhere to Federal Statutory language (42 CFR Part 54), on Charitable Choice provisions. Charitable Choice applies to both prevention and treatment services; however, funding cannot be expended for inherently religious activities such as worship, religious instruction, or proselytization.

III. **DEFINITIONS:**

Applicable program: Programs and services contracted by the Divisions of Substance Abuse and Mental Health. Policy applies to Sub-contractors, where applicable, as well.

Religious organization: A nonprofit religious organization.

Program beneficiary: An individual who receives services under a program funded in whole or in part by applicable programs.

Program participant: A public or private entity that has received financial assistance, under an applicable program.

SAMHSA: The U.S. Substance Abuse and Mental Health Services Administration.

SAMHSA Charitable Choice Provisions: The provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

Direct funding or Funds provided directly: 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.

DSAMH: Delaware "Division of Substance Abuse and Mental Health".

IV. SCOPE: All clients served by DSAMH.

V. PROCEDURES/RESPONSIBILITIES:

1. DSAMH will conduct the following activities with contracted/subcontracted Religious Organizations:
 - A. Assure that religious organizations under contract and providing treatment provide notice to their clientele regarding their right to be referred to alternative treatment services;
 - B. Ensure that religious organizations under contract and providing treatment make referrals to alternative treatment services when requested by their clientele;
 - C. Fund/provide, or both, alternate and comparable services within a reasonable period of time to which the client has no religious objection (it need not be a secular organization, but merely one to which the client has no religious objections);
 - D. Effectively monitor adherence to the above requirements, to include identifying those contracted prevention and treatment providers who identify themselves as a religious organization or profess religious beliefs as part of the services they provide on behalf of DSAMH;
 - E. Assure notification from a contracted religious organization when a referral is made to an alternate and comparable service within a reasonable period of time to which the client has no religious objection. Notification is necessary in order to track and report the number of referrals made by contracted religious organizations.
2. Religious Organization will ensure rights of program beneficiary:
 - A. General requirements: If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in paragraphs (b) through (d) of this section.
 - B. Notice: Program participants that refer an individual to alternative service providers, and the State government that administers the applicable programs, shall ensure that notice of the individual's right to services from an alternative provider is provided to all program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section.
 - C. Referral to an alternative provider: If a program beneficiary or prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider. The

State shall have a system in place to ensure that referrals are made to an alternative provider. That system shall ensure that the following occurs:

- (a) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider;
- (b) In making such referral, the program participant shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;
- (c) All referrals shall be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR Part 2 (“Confidentiality of Alcohol and Drug Abuse Patient Records”);
- (d) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the State or responsible unit of government of such referral; and
- (e) The program participant shall ensure that the program beneficiary makes contact with the alternative provider to which he or she is referred.

D. Provision and funding of alternative services. If an otherwise eligible applicant or recipient objects to the religious character of a SAMHSA-funded service provider, the recipient is entitled to receive services from an alternative provider. In such cases, the State or local agency must provide the individual with alternative services within a reasonable period of time, as defined by the State agency. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State agency.

- 3. Reporting: Religious organizations will be required to report the data defined in 2.C to DSAMH.
- 4. Conflicts of interest: Program provider will notify DSAMH immediately of any conflicts of interest that may affect provision of contracted services and proposed remedies.