DSAMH-Contracted Religious Organizations: Charitable Choice

Division of Substance Abuse and Mental Health (DSAMH)

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Prepared By: DSAMH Policy Committee
Applicability:

1. DSAMH State Providers

Approved By: Joanna Champney, Division Director



Date Signed: July 15, 2026

I. PURPOSE

The purpose of this policy is to outline the 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 subcontract shall comply with all federal regulations pertaining to Charitable Choice. Providers shall 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

“Client” means an individual who receives services under a program funded in whole or in part by applicable programs.

"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.

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

"DTRN" means Delaware Treatment and Referral Network.

"Program" means levels of service contracted by the Division of Substance Abuse and Mental Health. This policy applies to subcontractors, where applicable, as well.

"Religious organization" means a nonprofit religious organization.

"SAMHSA" means the U.S. Substance Abuse and Mental Health Services Administration.

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

IV. SCOPE

All DSAMH-contracted service providers.

V. PROCEDURES/RESPONSIBILITIES

A. DSAMH shall conduct the following activities with contracted or subcontracted religious organizations:
   1. Ensure that religious organizations under contract and providing treatment give notice to their clientele regarding their right to be referred to alternative treatment services;
   2. Ensure that religious organizations under contract and providing treatment establish a referral process to alternative treatment services when requested by their clients who may object to the religious nature of the program or have other program concerns;
   3. Allow religious organizations to accept the funds to provide services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals;
   4. Effectively monitor adherence to the above requirements, to include identifying those contracted providers who identify themselves as a religious organization or profess religious beliefs as part of the services they are contracted by DSAMH to provide; and
   5. Track and monitor notifications from contracted religious organizations if clients have objections to the current services and require referrals to an alternate and

comparable service. Notification is necessary to track and report the number of referrals made by contracted religious organizations to ensure federal compliance.

B. Religious organizations shall ensure the rights of the client:
   1. General requirements: If an otherwise eligible client or prospective client objects to the religious character of a program, within five (5) business days after the date of such objection, the client shall have rights to notice, referral, and alternative services, as outlined in sections V.B.2 through V.B.3.
   2. Notice: Programs 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 clients or prospective clients. The notice must clearly articulate the client's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section.
   3. Referral to an alternative provider: If a client or prospective client objects to a program that is a religious organization, that participating religious organization shall, within five (5) business days after the date of objection, refer the 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 must ensure that the following occurs:
      a. Within five (5) business days after the date of such objection, the program shall refer the beneficiary to an alternative provider;
      b. When referring, the program 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 DTRN;
      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 client to an alternative provider, the program shall notify the DSAMH Policy and Compliance Unit of such referral within five (5) business days; and
      e. The program shall ensure a warm handoff to the alternative provider and conduct follow up to ensure that the client was admitted to the accepting program.
   4. Provision and funding of alternative services: If an otherwise eligible applicant or recipient objects to the religious character of a DSAMH-funded service provider, the recipient is entitled to receive services from an alternative provider. In such cases, the State or local agency shall provide the individual with alternative services within ten (10) business days. That alternative provider shall be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a level of care that is not less than the

level of care that the individual would have received from the program to which the individual had such objection.

C. Reporting: Religious organizations shall be required to report the data defined in V.B.3 to DSAMH.

D. Conflicts of interest: The provider shall notify DSAMH immediately of any conflicts of interest that may affect provision of contracted services and proposed remedies.

VI. POLICY LIFESPAN

This policy will be reviewed annually.

VII. REFERENCES

A. 42 CFR 54

VIII. RESOURCES

A. N/A

IX. RELATED POLICIES

A. N/A