


POLICY AND PROCEDURE

<u>POLICY TITLE:</u> DSAMH Charitable Choice Policy/Religious Organizations	<u>POLICY #:</u> DSAMH007
<u>PREPARED BY:</u> DSAMH Policy Committee	<u>DATE ISSUED:</u> 07/19/19
<u>RELATED POLICIES:</u>	<u>REFERENCE:</u> 42 CFR 54
<u>DATES REVIEWED:</u>	<u>DATES REVISED:</u>
<u>APPROVED BY:</u>  8/16/2022 10:44 AM PDT	<u>NOTES:</u> <input type="checkbox"/> DSAMH Internal Policy <input type="checkbox"/> DSAMH Operated Program <input checked="" type="checkbox"/> DSAMH State Providers <input type="checkbox"/> Delaware Psychiatric Center <input type="checkbox"/> Targeted Use Policy (Defined in scope)

- 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 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:**
- “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 Divisions 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 clients served by contracted religious organizations.

V. PROCEDURES/RESPONSIBILITIES:

- A. DSAMH will conduct the following activities with contracted or subcontracted religious organizations:
 - 1. Assure that religious organizations under contract and providing treatment provide notice to their clientele regarding their right to be referred to alternative treatment services;
 - 2. Ensure that religious organizations under contract and providing treatment make referrals to alternative treatment services when requested by their clientele;
 - 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. Establish a referral process, to a reasonably accessible program, for clients who may object to the religious nature of the program;
 - 5. 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 provide on behalf of DSAMH;
 - 6. Assure notification from a contracted religious organization when a referral is made to an alternate and comparable service within ten (10) business days 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.
- B. Religious Organization will ensure rights of the client:
 - 1. General requirements: If an otherwise eligible client or prospective client objects to the religious character of a program, within ten (10) business days after the date of such objection, such client shall have rights to notice, referral, and alternative services, as outlined in paragraphs (3.b) through (3.d) of this section.
 - 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 beneficiaries. 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 the religious character of a program that is a religious organization, that participating religious organization shall, within ten (10) business days 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 shall, within ten (10) business days after the date of such objection, refer the beneficiary to an alternative provider;
 - b. In making such referral, 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 designee of such referral; and
 - e. The program shall ensure that the client makes contact with the alternative provider to which he or she is referred.
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 must provide the individual with alternative services within ten (10) business days. That alternative provider must 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 will be required to report the data defined in B.3 to DSAMH.

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

VI. POLICY LIFESPAN: This policy supersedes previous distributions of this policy as detailed in dates revised. This policy will be reviewed annually.

VII. RESOURCES: N/A