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38 USC CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL
AND DOMICILIARY FACILITIES; PROCUREMENT AND
SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY

-HEAD-

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL
PROPERTY

-MISC1-

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-STATAMEND-

AMENDMENT OF ANALYSIS

Pub. L. 108-422, title IV, Sec. 411(c)(2), (f), Nov. 30, 2004, 118 Stat. 2389, 2390, provided that, effective at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with section 1710B(b) of this title, this analysis is amended by striking out item 8116.

-MISC2-

AMENDMENTS

2010 - Pub. L. 111-163, title V, Sec. 501(b)(2), May 5, 2010, 124 Stat. 1157, struck out item 8107 "Operational and construction plans for medical facilities".

2008 - Pub. L. 110-387, title VII, Sec. 708(c), Oct. 10, 2008, 122 Stat. 4140, added item 8119.

2006 - Pub. L. 109-461, title II, Sec. 211(c)(2), title V, Secs. 502(a)(2), 503(a)(2), Dec. 22, 2006, 120 Stat. 3421, 3435, 3436, added items 8127, 8128, and 8138.

2004 - Pub. L. 108-422, title IV, Sec. 411(a)(2), Nov. 30, 2004, 118 Stat. 2389, added item 8118.

2003 - Pub. L. 108-170, title II, Sec. 202(d)(2), Dec. 6, 2003, 117 Stat. 2048, substituted "Hearing and notice requirements

regarding proposed leases" for "Designation of property to be leased" in item 8163.

2002 - Pub. L. 107-314, div. A, title VII, Sec. 721(a)(2), Dec. 2, 2002, 116 Stat. 2595, substituted "Sharing of Department of Veterans Affairs and Department of Defense health care resources" for "Sharing of Department and Department of Defense health-care resources" in item 8111.

Pub. L. 107-287, Sec. 6(a)(2), Nov. 7, 2002, 116 Stat. 2032, added item 8117.

1997 - Pub. L. 105-114, title II, Sec. 205(b)(2), Nov. 21, 1997, 111 Stat. 2289, struck out item 8168 "Limitation on number of agreements".

1996 - Pub. L. 104-262, title III, Sec. 301(d)(2), Oct. 9, 1996, 110 Stat. 3193, substituted "Sharing of health-care resources" for "Specialized medical resources" in item 8153.

1994 - Pub. L. 103-446, title XII, Sec. 1201(h)(5), (6), Nov. 2, 1994, 108 Stat. 4688, inserted "ENHANCED-USE" before "LEASES OF REAL" in chapter heading and "and certain other Federal agencies" after "Department" in item 8126.

1992 - Pub. L. 102-585, title VI, Sec. 603(a)(2), Nov. 4, 1992, 106 Stat. 4975, added item 8126.

Pub. L. 102-405, title I, Sec. 103(a)(2), Oct. 9, 1992, 106 Stat. 1975, added items 8157 and 8158.

1991 - Pub. L. 102-86, title IV, Sec. 401(b)(1), (3), Aug. 14, 1991, 105 Stat. 422, inserted "; LEASES OF REAL PROPERTY" in chapter heading and added analysis for subchapter V.

Pub. L. 102-83, Sec. 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404, substituted "Department and" for "Veterans' Administration and" in item 8111.

Pub. L. 102-54, Sec. 14(f)(1), June 13, 1991, 105 Stat. 287, amended the table of sections as in effect immediately before the enactment of Pub. L. 102-40 by transferring item 5016 so as to appear immediately after item 5015 and by substituting "payments" for "Payments" in item 5035.

Pub. L. 102-40, title IV, Sec. 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 5001 to 5056 as 8101 to 8156, respectively.

1988 - Pub. L. 100-322, title II, Sec. 205(b), May 20, 1988, 102 Stat. 513, added at end item 5016.

Pub. L. 100-322, title IV, Sec. 403(a)(2), May 20, 1988, 102 Stat. 545, added item 5025.

1986 - Pub. L. 99-576, title II, Secs. 223(a)(2), 231(c)(2)(B), Oct. 28, 1986, 100 Stat. 3261, 3264, substituted "Parking facilities" for "Garages and parking facilities" in item 5009 and struck out item 5057 "Reports to Congress".

1985 - Pub. L. 99-166, title III, Sec. 302(c)(2), Dec. 3, 1985, 99 Stat. 955, substituted "Operational and construction plans for medical facilities" for "Reports to congressional committees" in item 5007.

1982 - Pub. L. 97-174, Secs. 3(b)(2), 4(b), May 4, 1982, 96 Stat. 74, 75, substituted "Sharing of Veterans' Administration and Department of Defense health-care resources" for "Use of Armed Forces facilities" in item 5011, and added item 5011A.

1979 - Pub. L. 96-22, title III, Sec. 301(c), June 13, 1979, 93 Stat. 61, substituted "ACQUISITION AND OPERATION OF MEDICAL FACILITIES" for "PROVISIONS RELATING TO HOSPITALS AND HOMES" in heading for subchapter I, substituted "Definitions" for "Hospital and domiciliary facilities" in item 5001, "Acquisition of medical facilities" for "Construction and repair of buildings" in item 5002, "Authority to construct and alter, and acquire sites for, medical facilities" for "Use of Armed Forces facilities" in item 5003, "Congressional approval of certain medical facility

acquisitions" for "Garages and parking facilities" in item 5004, "Structural requirements" for "Acceptance of certain property" in item 5005, "Construction contracts" for "Property formerly owned by National Home for Disabled Volunteer Soldiers" in item 5006, and "Reports to congressional committees" for "Partial relinquishment of legislative jurisdiction" in item 5007, added items 5008 to 5015, and redesignated former items 5011 to 5014 as 5021 to 5024, respectively.

1977 - Pub. L. 95-62, Sec. 4(c), July 5, 1977, 91 Stat. 263, substituted "DOMICILIARY, NURSING HOME, AND HOSPITAL CARE" for "NURSING HOME CARE" in heading for subchapter III.

1976 - Pub. L. 94-581, title I, Sec. 115(b), Oct. 21, 1976, 90 Stat. 2853, substituted "health services development activities carried out under the National Health Planning and Resources Development Act of 1974" for "programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965" in item 5056.

1973 - Pub. L. 93-82, title III, Sec. 302(3), Aug. 2, 1973, 87 Stat. 195, added item 5007.

1966 - Pub. L. 89-785, title II, Secs. 201(b), 202(c), 2, Nov. 7, 1966, 80 Stat. 1372, 1373, 1376, substituted "Garages and parking facilities" for "Garages on hospital and domiciliary reservations" in item 5004, inserted "and to negotiate for common services" in item 5012, and added heading for subchapter IV and items 5051 to 5056 and 5075.

1964 - Pub. L. 88-450, Sec. 4(b), Aug. 19, 1964, 78 Stat. 503, added heading for subchapter III and items 5031 to 5037.

-End-

-CITE-

38 USC SUBCHAPTER I - ACQUISITION AND OPERATION OF
MEDICAL FACILITIES 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-End-

-CITE-

38 USC Sec. 8101 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8101. Definitions

-STATUTE-

For the purposes of this subchapter:

(1) The term "alter", with respect to a medical facility, means to repair, remodel, improve, or extend such medical facility.

(2) The terms "construct" and "alter", with respect to a medical facility, include such engineering, architectural, legal, fiscal, and economic investigations and studies and such surveys, designs, plans, construction documents, specifications, procedures, and other similar actions as are necessary for the construction or alteration, as the case may be, of such medical facility and as are carried out after the completion of the advanced planning (including the development of project requirements and design development) for such facility.

(3) The term "medical facility" means any facility or part thereof which is, or will be, under the jurisdiction of the Secretary for the provision of health-care services (including hospital, nursing home, or domiciliary care or medical services), including any necessary building and auxiliary structure, garage, parking facility, mechanical equipment, trackage facilities leading thereto, abutting sidewalks, accommodations for attending personnel, and recreation facilities associated therewith.

(4) The term "committee" means the Committee on Veterans' Affairs of the House of Representatives or the Committee on Veterans' Affairs of the Senate, and the term "committees" means both such committees.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 55, Sec. 5001; renumbered Sec. 8101, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 104-262, title II, Sec. 207(a), Oct. 9, 1996, 110 Stat. 3190.)

-MISC1-

AMENDMENTS

1996 - Par. (2). Pub. L. 104-262 substituted "construction documents" for "working drawings" and "design development" for "preliminary plans".

1991 - Pub. L. 102-40 renumbered section 5001 of this title as this section.

Par. (3). Pub. L. 102-83 substituted "Secretary" for "Administrator".

EFFECTIVE DATE

Section 302 of Pub. L. 96-22 provided that:

"(a) Except as provided in subsection (b) of this section, the amendments made by section 301 [enacting this subchapter, redesignating sections 5011 to 5014 of this title as sections 5021 to 5024 [now 8121 to 8124], respectively, and amending section 5022 [now 8122] of this title as so redesignated] shall take effect on October 1, 1979.

"(b)(1) The amendments made by section 301 shall not apply with respect to the acquisition, construction, or alteration of any medical facility (as defined in section 5001(3) [now 8101(3)] of title 38, United States Code, as amended by section 301(a) of this Act) if such acquisition, construction, or alteration (not including exchange) was approved before October 1, 1979, by the President.

"(2) The provisions of [former] section 5007(a) of title 38, United States Code, as amended by section 301(a) of this Act, shall take effect on the date of the enactment of this Act [June 13, 1979]."

-End-

-CITE-

38 USC Sec. 8102

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8102. Acquisition of medical facilities

-STATUTE-

(a) The Secretary shall provide medical facilities for veterans entitled to hospital, nursing home, or domiciliary care or medical services under this title.

(b) No medical facility may be constructed or otherwise acquired or altered except in accordance with the provisions of this subchapter.

(c) In carrying out this subchapter, the Secretary -

(1) shall provide for the construction and acquisition of medical facilities in a manner that results in the equitable distribution of such facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility; and

(2) shall give due consideration to excellence of architecture and design.

(d) In considering the need for any project for the construction, alteration, or acquisition (other than by exchange) of a medical facility which is expected to involve a total expenditure of more than \$2,000,000, the Secretary shall give consideration to the sharing of health-care resources with the Department of Defense under section 8111 of this title as an alternative to all or part of such project.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 55, Sec. 5002; amended Pub. L. 99-576, title II, Sec. 221(a), Oct. 28, 1986, 100 Stat. 3259; renumbered Sec. 8102 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, Sec. 14(f)(2), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5002 of

this title as this section.

Subsecs. (a), (c). Pub. L. 102-83 substituted "Secretary" for "Administrator".

Subsec. (d). Pub. L. 102-83 substituted "Secretary" for "Administrator".

Pub. L. 102-54 amended subsec. (d) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "section 5011" for "section 5001".

Pub. L. 102-40, Sec. 402(d)(1), amended subsec. (d), as amended by Pub. L. 102-54, by substituting "8111" for "5011". See above.

1986 - Subsec. (d). Pub. L. 99-576 added subsec. (d).

-End-

-CITE-

38 USC Sec. 8103

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8103. Authority to construct and alter, and to acquire sites for, medical facilities

-STATUTE-

(a) Subject to section 8104 of this title, the Secretary -

(1) may construct or alter any medical facility and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility (including the site of such facility) that the Secretary considers necessary for use as a medical facility; and

(3) in order to assure compliance with section 8110(a)(2) of this title, in the case of any outpatient medical facility for which it is proposed to lease space and for which a qualified lessor and an appropriate leasing arrangement are available, shall execute a lease for such facility within 12 months after funds are made available for such purpose.

(b) Whenever the Secretary considers it to be in the interest of the United States to construct a new medical facility to replace an existing medical facility, the Secretary (1) may demolish the existing facility and use the site on which it is located for the site of the new medical facility, or (2) if in the judgment of the Secretary it is more advantageous to construct such medical facility on a different site in the same locality, may exchange such existing facility and the site of such existing facility for the different site.

(c) Whenever the Secretary determines that any site acquired for the construction of a medical facility is not suitable for that purpose, the Secretary may exchange such site for another site to

be used for that purpose or may sell such site.

(d)(1) The Secretary may provide for the acquisition of not more than three facilities for the provision of outpatient services or nursing home care through lease-purchase arrangements on real property under the jurisdiction of the Department of Veterans Affairs.

(2)(A) In carrying out this subsection and notwithstanding any other provision of law, the Secretary may lease, with or without compensation and for a period of not to exceed 35 years, to another party any of the real property described in paragraph (1) of this subsection.

(B) Such real property shall be used as the site of a facility referred to in paragraph (1) of this subsection -

(i) constructed and owned by the lessee of such real property; and

(ii) leased under paragraph (3)(A) of this subsection to the Department for such use and for such other activities as the Secretary determines are appropriate.

(3)(A) The Secretary may enter into a lease for the use of any facility described in paragraph (2)(B) of this subsection for not more than 35 years under such terms and conditions as may be in the best interests of the Department.

(B) Each agreement to lease a facility under subparagraph (A) of this paragraph shall include a provision that -

(i) the obligation of the United States to make payments under the agreement is subject to the availability of appropriations for that purpose; and

(ii) the ownership of such facility shall vest in the United States at the end of such lease.

(4)(A) The Secretary may sublease any space in such a facility to another party at a rate not less than -

(i) the rental rate paid by the Secretary for such space under paragraph (3) of this subsection; plus

(ii) the amount the Secretary pays for the costs of administering such facility (including operation, maintenance, utility, and rehabilitation costs) which are attributable to such space.

(B) In any such sublease, the Secretary shall include such terms relating to default and nonperformance as the Secretary considers appropriate to protect the interests of the United States.

(5) The Secretary shall use the receipts of any payment for the lease of real property under paragraph (2) for the payment of the lease of a facility under paragraph (3).

(6) The authority to enter into an agreement under this subsection -

(A) shall not take effect until the Secretary has entered into agreements under section 316 of this title to carry out at least three collocations; and

(B) shall expire on October 1, 1993.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 56, Sec. 5003; amended Pub. L. 101-237, title VI, Sec. 603(b), Dec. 18, 1989, 103 Stat. 2097; renumbered Sec. 8103 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-446, title XII, Sec. 1201(d)(16), Nov. 2, 1994, 108 Stat. 4684.)

-MISC1-

AMENDMENTS

1994 - Subsec. (d)(6)(A). Pub. L. 103-446 substituted "section 316" for "section 230(c)".

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5003 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-40, Sec. 402(d)(1), substituted "8104" for "5004" in introductory provisions and "8110(a)(2)" for "5010(a)(2)" in par. (3).

Subsecs. (b), (c). Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

1989 - Subsec. (d). Pub. L. 101-237 added subsec. (d).

DEVELOPMENT OF MEDICAL-FACILITY MODULAR COMPONENTS

Pub. L. 99-166, title III, Sec. 304, Dec. 3, 1985, 99 Stat. 956, directed Administrator of Veterans' Affairs, not later than one year after Dec. 3, 1985, to develop a modular approach to planning and design of an appropriate Veterans' Administration medical facility for furnishing of hospital care.

-End-

-CITE-

38 USC Sec. 8104

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8104. Congressional approval of certain medical facility acquisitions

-STATUTE-

(a)(1) The purpose of this subsection is to enable Congress to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility.

(2) No funds may be appropriated for any fiscal year, and the Secretary may not obligate or expend funds (other than for advance planning and design), for any major medical facility project or any major medical facility lease unless funds for that project or lease have been specifically authorized by law.

(3) For the purpose of this subsection:

(A) The term "major medical facility project" means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$10,000,000, but such term does not include an acquisition by exchange.

(B) The term "major medical facility lease" means a lease for space for use as a new medical facility at an average annual

rental of more than \$1,000,000.

(b) Whenever the President or the Secretary submit to the Congress a request for the funding of a major medical facility project (as defined in subsection (a)(3)(A)) or a major medical facility lease (as defined in subsection (a)(3)(B)), the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Any such prospectus shall include the following:

(1) A detailed estimate of the total costs of the medical facility to be constructed, altered, leased, or otherwise acquired under this subchapter, including a description of the location of such facility and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a detailed report of the consideration that was given to acquiring an existing facility by lease or purchase and to the sharing of health-care resources with the Department of Defense under section 8111 of this title. Such detailed estimate shall include an identification of each of the following:

- (A) Total construction costs.
- (B) Activation costs.
- (C) Special purpose alterations (lump-sum payment) costs.
- (D) Number of personnel.
- (E) Total costs of ancillary services, equipment, and all other items.

(2) Demographic data applicable to such facility, including information on projected changes in the population of veterans to be served by the facility over a five-year period, a ten-year period, and a twenty-year period.

(3) Current and projected workload and utilization data regarding the facility, including information on projected changes in workload and utilization over a five-year period, a ten-year period, and a twenty-year period.

(4) Projected operating costs of the facility, including both recurring and non-recurring costs (including and identifying both recurring and non-recurring costs (including activation costs and total costs of ancillary services, equipment and all other items)) over a five-year period, a ten-year period, and a twenty-year period.

(5) The priority score assigned to the project or lease under the Department's prioritization methodology and, if the project or lease is being proposed for funding before a project or lease with a higher score, a specific explanation of the factors other than the priority score that were considered and the basis on which the project or lease is proposed for funding ahead of projects or leases with higher priority scores.

(6) In the case of a prospectus proposing the construction of a new or replacement medical facility, each of the following:

- (A) A detailed estimate of the total costs (including total construction costs, activation costs, special purpose alterations (lump-sum payment) costs, number of personnel and total costs of ancillary services, equipment and all other items) for each alternative to construction of the facility that was considered.
- (B) A comparison of total costs to total benefits for each such alternative.
- (C) An explanation of why the preferred alternative is the most effective means to achieve the stated project goals and the most cost-effective alternative.

(c) Not less than 30 days before obligating funds for a major medical facility project approved by a law described in subsection (a)(2) of this section in an amount that would cause the total amount obligated for that project to exceed the amount specified in the law for that project (or would add to total obligations exceeding such specified amount) by more than 10 percent, the Secretary shall provide the committees with notice of the Secretary's intention to do so and the reasons for the specified amount being exceeded.

(d)(1) Except as provided in paragraph (2), in any case in which the Secretary proposes that funds be used for a purpose other than the purpose for which such funds were appropriated, the Secretary shall promptly notify each committee, in writing, of the particulars involved and the reasons why such funds were not used for the purpose for which appropriated.

(2)(A) In any fiscal year, unobligated amounts in the Construction, Major Projects account that are a direct result of bid savings from a major construction project may only be obligated for major construction projects authorized for that fiscal year or a previous fiscal year.

(B) Whenever the Secretary obligates amounts for a major construction project under subparagraph (A), the Secretary shall submit to the Committee on Veterans' Affairs and the Committee on Appropriations of the Senate and the Committee on Veterans' Affairs and the Committee on Appropriations of the House of Representatives notice of the following:

- (i) The major construction project that is the source of the bid savings.
- (ii) The other major construction project for which the amounts are being obligated.
- (iii) The amounts being obligated for such other major construction project.

(C) The Secretary may not obligate an amount under subparagraph (A) to expand the purpose of a major construction project except pursuant to a provision of law enacted after the date on which the Secretary submits to the committees described in subparagraph (B) notice of the following:

- (i) The major construction project that is the source of the bid savings.
- (ii) The major construction project for which the Secretary intends to expand the purpose.
- (iii) A description of such expansion of purpose.
- (iv) The amounts the Secretary intends to obligate to expand the purpose.

(e) The Secretary may accept gifts or donations for any of the purposes of this subchapter.

(f) The Secretary may not obligate funds in an amount in excess of \$500,000 from the Advance Planning Fund of the Department toward design or development of a major medical facility project (as defined in subsection (a)(3)(A)) until -

- (1) the Secretary submits to the committees a report on the proposed obligation; and
- (2) a period of 30 days has passed after the date on which the report is received by the committees.

(g) The limitation in subsection (f) does not apply to a project for which funds have been authorized by law in accordance with subsection (a)(2).

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 56, Sec. 5004; amended Pub. L. 99-166, title III, Secs. 301, 303, Dec. 3, 1985, 99 Stat. 954, 955; Pub. L. 99-576, title II, Sec. 221(b), Oct. 28, 1986, 100 Stat. 3259; Pub. L. 100-322, title IV, Sec. 422, May 20, 1988, 102 Stat. 553; renumbered Sec. 8104 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, Sec. 301(a), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-79, Sec. 3(a), Aug. 13, 1993, 107 Stat. 771; Pub. L. 104-262, title II, Secs. 205(a), 206(a), (c), Oct. 9, 1996, 110 Stat. 3189, 3190; Pub. L. 105-368, title VII, Sec. 704, Nov. 11, 1998, 112 Stat. 3350; Pub. L. 108-170, title II, Sec. 201, Dec. 6, 2003, 117 Stat. 2047; Pub. L. 108-422, title IV, Sec. 416, Nov. 30, 2004, 118 Stat. 2393; Pub. L. 109-461, title VIII, Sec. 812, Dec. 22, 2006, 120 Stat. 3447; Pub. L. 110-387, title VII, Sec. 705, Oct. 10, 2008, 122 Stat. 4138; Pub. L. 111-275, title IX, Sec. 905, Oct. 13, 2010, 124 Stat. 2895; Pub. L. 112-37, Secs. 6, 7, Oct. 5, 2011, 125 Stat. 394, 396.)

-MISC1-

AMENDMENTS

2011 - Subsec. (b)(1). Pub. L. 112-37, Sec. 6(1)(A), substituted "detailed estimate of the total costs" for "detailed description" and "a detailed report of the consideration" for "a description of the consideration" and inserted at end "Such detailed estimate shall include an identification of each of the following:" and subpars. (A) to (E).

Subsec. (b)(2). Pub. L. 112-37, Sec. 6(1)(B), (C), struck out par. (2), redesignated par. (4) as (2), and substituted "a five-year period, a ten-year period, and a twenty-year period" for "a five-year period and a ten-year period". Prior to amendment, par. (2) read as follows: "An estimate of the cost to the United States of the construction, alteration, lease, or other acquisition of such facility (including site costs, if applicable)."

Subsec. (b)(3). Pub. L. 112-37, Sec. 6(1)(B), (D), struck out par. (3), redesignated par. (5) as (3), and inserted before period at end ", including information on projected changes in workload and utilization over a five-year period, a ten-year period, and a twenty-year period". Prior to amendment, par. (3) read as follows: "An estimate of the cost to the United States of the equipment required for the operation of such facility."

Subsec. (b)(4). Pub. L. 112-37, Sec. 6(1)(B), (E), redesignated par. (6) as (4), substituted "Projected" for "Current and projected", and inserted before period at end "(including and identifying both recurring and non-recurring costs (including activation costs and total costs of ancillary services, equipment and all other items)) over a five-year period, a ten-year period, and a twenty-year period". Former par. (4) redesignated (2).

Subsec. (b)(5). Pub. L. 112-37, Sec. 6(1)(B), redesignated par. (7) as (5). Former par. (5) redesignated (3).

Subsec. (b)(6). Pub. L. 112-37, Sec. 6(1)(B), (F), redesignated par. (8) as (6), substituted "each of the following:" for "a description of each alternative to construction of the facility that was considered.", and added subpars. (A) to (C). Former par. (6) redesignated (4).

Subsec. (b)(7),(8). Pub. L. 112-37, Sec. 6(1)(B), redesignated pars. (7) and (8) as (5) and (6), respectively.

Subsec. (d). Pub. L. 112-37, Sec. 6(2)(A), substituted "major

construction project" for "major medical facility project" wherever appearing.

Subsec. (d)(2)(A). Pub. L. 112-37, Sec. 6(2)(B)(i), substituted "major construction projects" for "major medical facility projects".

Subsec. (d)(2)(B). Pub. L. 112-37, Sec. 6(2)(B)(ii), substituted "major construction project" for "major medical facility" in introductory provisions.

Subsec. (d)(2)(C). Pub. L. 112-37, Sec. 7, added subpar. (C).

2010 - Subsec. (d). Pub. L. 111-275 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), in any case" for "In any case", and added par. (2).

2008 - Subsec. (a)(3)(B). Pub. L. 110-387 substituted "\$1,000,000" for "\$600,000".

2006 - Subsec. (a)(3)(A). Pub. L. 109-461 substituted "\$10,000,000" for "\$7,000,000".

2004 - Subsec. (g). Pub. L. 108-422 added subsec. (g).

2003 - Subsec. (a)(3)(A). Pub. L. 108-170 substituted "\$7,000,000" for "\$4,000,000".

1998 - Subsec. (a)(3)(B). Pub. L. 105-368 substituted "\$600,000" for "\$300,000".

1996 - Subsec. (a)(3)(A). Pub. L. 104-262, Sec. 206(a), substituted "\$4,000,000" for "\$3,000,000".

Subsec. (b). Pub. L. 104-262, Sec. 205(a)(1), inserted introductory provisions and struck out former introductory provisions which read as follows: "In the event that the President or the Secretary proposes to the Congress the funding of any construction, alteration, lease, or other acquisition to which subsection (a) of this section is applicable, the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Such prospectus shall include -".

Subsec. (b)(1) to (3). Pub. L. 104-262, Sec. 205(a)(2)-(4), substituted "A detailed" for "a detailed" and "title." for "title;" in par. (1), "An estimate" for "an estimate" and "applicable)." for "applicable); and" in par. (2), and "An estimate" for "an estimate" in par. (3).

Subsec. (b)(4) to (8). Pub. L. 104-262, Sec. 205(a)(5), added pars. (4) to (8).

Subsec. (f). Pub. L. 104-262, Sec. 206(c), added subsec. (f).

1993 - Subsec. (a)(3)(A). Pub. L. 103-79 substituted "\$3,000,000" for "\$2,000,000".

1992 - Subsec. (a)(2). Pub. L. 102-405, Sec. 301(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "It shall not be in order in the Senate or in the House of Representatives to consider a bill, resolution, or amendment which would make an appropriation for any fiscal year which may be expended for a major medical facility project or a major medical facility lease unless -

"(A) such bill, resolution, or amendment specifies the amount to be appropriated for that project or lease,

"(B) the project or lease has been approved in a resolution adopted by the Committee on Veterans' Affairs of that House, and

"(C) the amount to be appropriated for that project or lease is no more than the amount specified in that resolution for that project or lease for that fiscal year."

Subsec. (a)(3)(B). Pub. L. 102-405, Sec. 301(a)(2), inserted "new" after "as a" and substituted "\$300,000" for "\$500,000".

Subsec. (c). Pub. L. 102-405, Sec. 301(a)(3), substituted "law" for "resolution" in two places.

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5004 of this title as this section.

Subsec. (b). Pub. L. 102-83 substituted "Secretary" for "Administrator" in two places in introductory provisions.

Subsec. (b)(1). Pub. L. 102-40, Sec. 402(d)(1), substituted "8111" for "5011".

Subsec. (c). Pub. L. 102-83 substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's".

Subsecs. (d), (e). Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

1988 - Subsec. (a)(2). Pub. L. 100-322, Sec. 422(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "After the adoption by the committees during a fiscal year of resolutions with identical texts approving major medical facility projects, it shall not be in order in the House of Representatives or in the Senate to consider a bill, resolution, or amendment making an appropriation for that fiscal year or for the next fiscal year which may be expended for a major medical facility project -

"(A) if the project for which the appropriation is proposed to be made is not approved in those resolutions; or

"(B) in the event that the project is approved in the resolutions, if either -

"(i) the bill, resolution, or amendment making the appropriation does not specify -

"(I) the medical facility project for which the appropriation is proposed to be made; and

"(II) the amount proposed to be appropriated for the project; or

"(ii) the amount proposed to be appropriated for the project (when added to any amount previously appropriated for the project) exceeds the amount approved for the project."

Subsec. (a)(3), (4). Pub. L. 100-322, Sec. 422(b), added par. (3) and struck out former pars. (3) and (4) which read as follows:

"(3) No appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than \$500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof.

"(4) For the purpose of this subsection, the term 'major medical facility project' means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$2,000,000. Such term does not include an acquisition by exchange."

Subsec. (c). Pub. L. 100-322, Sec. 422(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The estimated cost of any construction, alteration, lease, or other acquisition that is approved under this section, as set forth in the pertinent resolutions described in subsection (a) of this section, may be increased by the Administrator in the contract for such construction, alteration, lease, or other acquisition by an amount equal to the percentage increase, if any, as determined by the Administrator, in construction, alteration, lease, or other acquisition costs, as the case may be, from the date of such approval to the date of contract, but in no event may the amount of such increase exceed 10 per centum of such estimated cost."

Subsecs. (d) to (f). Pub. L. 100-322, Sec. 422(d), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which read as follows: "In the case of any medical facility approved for construction, alteration, lease, or other acquisition by each committee under subsection (a) of this section for which funds have not been appropriated within one year after the date of such approval, either such committee may by resolution rescind its approval at any time thereafter before such funds are appropriated."

1986 - Subsec. (b)(1). Pub. L. 99-576 inserted "and to the sharing of health-care resources with the Department of Defense under section 5011 of this title" at end.

1985 - Subsec. (a). Pub. L. 99-166, Sec. 301, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In order to ensure the equitable distribution of medical facilities throughout the United States, taking into consideration the comparative urgency of the need for the services to be provided in the case of each particular facility -

"(1) no appropriation may be made for the construction, alteration, or acquisition (not including exchanges) of any medical facility which involves a total expenditure of more than \$2,000,000 unless each committee has first adopted a resolution approving such construction, alteration, or acquisition and setting forth the estimated cost thereof; and

"(2) no appropriation may be made for the lease of any space for use as a medical facility at an average annual rental of more than \$500,000 unless each committee has first adopted a resolution approving such lease and setting forth the estimated cost thereof."

Subsec. (b)(1). Pub. L. 99-166, Sec. 303, inserted "and, in the case of a prospectus proposing the construction of a new or replacement medical facility, a description of the consideration that was given to acquiring an existing facility by lease or purchase" after "such facility".

EFFECTIVE DATE OF 1996 AMENDMENT

Section 205(b) of Pub. L. 104-262 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to any prospectus submitted by the Secretary of Veterans Affairs after the date of the enactment of this Act [Oct. 9, 1996]."

EFFECTIVE DATE OF 1992 AMENDMENT

Section 206(b)(2) of Pub. L. 104-262 provided that: "The amendments made by subsection (a) of such section [meaning section 301(a) of Pub. L. 102-405, amending this section] shall apply with respect to any major medical facility project or any major medical facility lease of the Department of Veterans Affairs, regardless of when funds are first appropriated for that project or lease, except that in the case of a project for which funds were first appropriated before October 9, 1992, such amendments shall not apply with respect to amounts appropriated for that project for a fiscal year before fiscal year 1998."

Section 301(b) of Pub. L. 102-405 provided that the amendments made by section 301(a) of Pub. L. 102-405, amending this section, were not applicable with respect to any project for which funds were appropriated before Oct. 9, 1992, prior to repeal by Pub. L. 104-262, title II, Sec. 206(b)(1), Oct. 9, 1996, 110 Stat. 3190.

-End-

-CITE-

38 USC Sec. 8105

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8105. Structural requirements

-STATUTE-

(a) Each medical facility (including each nursing home facility for which the Secretary contracts under section 1720 of this title and each State home facility constructed or altered under subchapter III of this chapter) shall be of fire, earthquake, and other natural disaster resistant construction in accordance with standards which the Secretary shall prescribe on a State or regional basis after surveying appropriate State and local laws, ordinances, and building codes and climatic and seismic conditions pertinent to each such facility. When an existing structure is acquired for use as a medical facility, it shall be altered to comply with such standards.

(b)(1) In order to carry out this section, the Secretary shall appoint an advisory committee to be known as the "Advisory Committee on Structural Safety of Department Facilities", on which shall serve at least one architect and one structural engineer who are experts in structural resistance to fire, earthquake, and other natural disasters and who are not employees of the Federal Government.

(2) Such advisory committee shall advise the Secretary on all matters of structural safety in the construction and altering of medical facilities in accordance with the requirements of this section and shall review and make recommendations to the Secretary on the regulations prescribed under this section.

(3) The Associate Deputy Secretary, the Under Secretary for Health or the designee of the Under Secretary for Health, and the Department official charged with the responsibility for construction shall be ex officio members of such advisory committee.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 57, Sec. 5005; amended Pub. L. 96-128, title V, Sec. 501(e), Nov. 28, 1979, 93 Stat. 987; renumbered Sec. 8105, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Secs. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

-MISC1-

AMENDMENTS

1992 - Subsec. (b)(3). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

1991 - Pub. L. 102-40 renumbered section 5005 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 5(c)(1), substituted "1720" for "620".

Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Subsec. (b). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1979 - Subsec. (a). Pub. L. 96-128 substituted "subchapter III of this chapter" for "section 5031 of this title".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-128 effective Nov. 28, 1979, see section 601(b) of Pub. L. 96-128, set out as a note under section 1114 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

-End-

-CITE-

38 USC Sec. 8106

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8106. Construction contracts

-STATUTE-

(a) The Secretary may carry out any construction or alteration authorized under this subchapter by contract if the Secretary considers it to be advantageous to the United States to do so.

(b)(1) The Secretary may obtain, by contract or otherwise, the services of individuals who are architects or engineers and of architectural and engineering corporations and firms, to the extent that the Secretary may require such services for any medical facility authorized to be constructed or altered under this subchapter.

(2) No corporation, firm, or individual may be employed under the authority of paragraph (1) of this subsection on a permanent basis.

(c) Notwithstanding any other provision of this section, the Secretary shall be responsible for all construction authorized under this subchapter, including the interpretation of construction contracts, the approval of materials and workmanship supplied pursuant to a construction contract, approval of changes in the construction contract, certification of vouchers for payments due the contractor, and final settlement of the contract.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 58, Sec. 5006; renumbered Sec. 8106, Pub. L. 102-40, title

IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5006 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

-End-

-CITE-

38 USC Sec. 8107

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8107. Repealed.

-MISC1-

[Sec. 8107. Repealed. Pub. L. 111-163, title V, Sec. 501(b)(1), May 5, 2010, 124 Stat. 1157].

Section, added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 58, Sec. 5007; amended Pub. L. 99-166, title III, Sec. 302(a)-(c)(1), Dec. 3, 1985, 99 Stat. 955; Pub. L. 99-576, title II, Sec. 222, Oct. 28, 1986, 100 Stat. 3259; renumbered Sec. 8107 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, Sec. 14(f)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104-262, title II, Sec. 204, Oct. 9, 1996, 110 Stat. 3188; Pub. L. 105-368, title X, Sec. 1005(b)(18), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 108-170, title II, Sec. 203, Dec. 6, 2003, 117 Stat. 2048, related to operational and construction plans for medical facilities.

-End-

-CITE-

38 USC Sec. 8108

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8108. Contributions to local authorities

-STATUTE-

The Secretary may make contributions to local authorities toward, or for, the construction of traffic controls, road improvements, or other devices adjacent to a medical facility if considered necessary for safe ingress or egress.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 58, Sec. 5008; renumbered Sec. 8108, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5001(g) of this title prior to the general revision of this subchapter by Pub. L. 96-22.

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5008 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator".

-End-

-CITE-

38 USC Sec. 8109

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8109. Parking facilities

-STATUTE-

(a) For the purpose of this section -

(1) The term "garage" means a structure (or part of a structure) in which vehicles may be parked.

(2) The term "parking facility" includes -

(A) a surface parking lot; and

(B) a garage.

(3) The term "eligible person" means an individual to whom the Secretary is authorized to furnish medical examination or treatment.

(b) In order to accommodate the vehicles of employees of medical facilities, vehicles used to transport veterans and eligible persons to or from such facilities for the purpose of examination or treatment, and the vehicles of visitors and other individuals

having business at such facilities, the Secretary -

(1) may construct or alter parking facilities, and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Secretary considers necessary for use as the site for any such construction or alteration;

(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility that the Secretary considers necessary for use as a parking facility; and

(3) may operate and maintain parking facilities.

(c)(1) Except as provided in paragraph (2) of this subsection, each employee, visitor, and other individual having business at a medical facility for which parking fees have been established under subsection (d) or (e) of this section shall be charged the applicable parking fee for the use of a parking facility at such medical facility.

(2) A parking fee shall not be charged under this subsection for the accommodation of any vehicle used to transport to or from a medical facility -

(A) a veteran or eligible person in connection with such veteran or eligible person seeking examination or treatment; or

(B) a volunteer worker (as determined in accordance with regulations which the Secretary shall prescribe) in connection with such worker performing services for the benefit of veterans receiving care at a medical facility.

(3) The Secretary shall collect (or provide for the collection of) parking fees charged under this subsection.

(d)(1) For each medical facility where funds from the revolving fund described in subsection (h) of this section are expended for -

(A) a garage constructed or acquired by the Department at a cost exceeding \$500,000 (or, in the case of acquisition by lease, \$100,000 per year); or

(B) a project for the alteration of a garage at a cost exceeding \$500,000,

the Secretary shall prescribe a schedule of parking fees to be charged at all parking facilities used in connection with such medical facility.

(2) The parking fee schedule prescribed for a medical facility referred to in paragraph (1) of this subsection shall be designed to establish fees which the Secretary determines are reasonable under the circumstances.

(e) The Secretary may prescribe a schedule of parking fees for the parking facilities at any medical facility not referred to in subsection (d) of this section. Any such schedule shall be designed to establish fees which the Secretary determines to be reasonable under the circumstances and shall cover all parking facilities used in connection with such medical facility.

(f) The Secretary may contract (by lease or otherwise) for the operation of parking facilities at medical facilities under such terms and conditions as the Secretary prescribes and may do so without regard to laws requiring full and open competition.

(g) Subject to subsections (h) and (i) of this section, there are authorized to be appropriated such amounts as are necessary to finance (in whole or in part) the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities.

(h)(1) Amounts appropriated pursuant to subsection (g) of this

section and parking fees collected under subsection (c) of this section shall be administered as a revolving fund and shall be available without fiscal year limitation.

(2) The revolving fund shall be deposited in a checking account with the Treasurer of the United States.

(3)(A) Except as provided in subparagraph (B) of this paragraph, no funds other than funds from the revolving fund may be expended for the construction, alteration, or acquisition (including site acquisition) of a garage at a medical facility after September 30, 1986.

(B) Subparagraph (A) of this paragraph does not apply to the use of funds for investigations and studies, surveys, designs, plans, construction documents, specifications, and similar actions not directly involved in the physical construction of a structure.

(i)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities and may be made only as provided for in appropriation Acts.

(2) For the purpose of section 8104(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund (including any funds proposed in such bill, resolution, or amendment to be appropriated to the revolving fund) may be expended for a project involving a total expenditure of more than \$4,000,000 for the construction, alteration, or acquisition (including site acquisition) of a parking facility or facilities at a medical facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.

(j) Funds in a construction account or capital account that are available for a construction project or a nonrecurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to that project.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 59, Sec. 5009; amended Pub. L. 99-576, title II, Sec. 223(a)(1), Oct. 28, 1986, 100 Stat. 3259; renumbered Sec. 8109 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-79, Sec. 3(b), Aug. 13, 1993, 107 Stat. 771; Pub. L. 104-262, title II, Sec. 207(b), Oct. 9, 1996, 110 Stat. 3190; Pub. L. 105-368, title VII, Sec. 705, Nov. 11, 1998, 112 Stat. 3350; Pub. L. 108-422, title IV, Sec. 415, Nov. 30, 2004, 118 Stat. 2393.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5004 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

AMENDMENTS

2004 - Subsec. (j). Pub. L. 108-422 added subsec. (j).

1998 - Subsec. (i)(2). Pub. L. 105-368 substituted "\$4,000,000" for "\$3,000,000".

1996 - Subsec. (h)(3)(B). Pub. L. 104-262 substituted "construction documents" for "working drawings".

1993 - Subsec. (i)(2). Pub. L. 103-79 substituted "\$3,000,000" for "\$2,000,000".

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5009 of this title as this section.

Subsecs. (a) to (c). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (d)(1). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in concluding provisions.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in subpar. (A).

Subsecs. (d)(2), (e), (f). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (i)(2). Pub. L. 102-40, Sec. 402(d)(1), substituted "8104(a)(2)" for "5004(a)(2)".

1986 - Pub. L. 99-576 amended section generally, substituting "Parking facilities" for "Garages and parking facilities" in section catchline and substituting present provisions consisting of subsecs. (a) to (i) for former provisions consisting of subsecs. (a) to (c), and generally revising and expanding section to require VA to establish and collect reasonable parking fees at all facilities where a garage is constructed or acquired or altered at a cost of more than \$500,000 (or leased for more than \$100,000 per year), and allowing discretionary paid parking at all other facilities.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 223(b) of Pub. L. 99-576 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 28, 1986].

"(2)(A) The amendments made by this section shall not abrogate the provisions of a collective bargaining agreement which, on the date of the enactment of this Act, is in effect and includes a provision which specifies a termination date for such agreement.

"(B) After the date of the enactment of this Act, if a collective bargaining agreement described in subparagraph (A) is modified, extended, or renewed, such subparagraph shall no longer, as of the date of the modification, extension, or renewal, apply to such agreement.

"(C) In the case of a collective bargaining agreement which on such date of enactment is in effect but has no provision which specifies a termination date, the authorities and requirements in section 5009 [now 8109] of title 38, United States Code, as amended by subsection (a)(1) of this section, to establish and collect parking fees shall take effect on January 1, 1988.

"(3) Section 5009 [now 8109] of title 38, United States Code, as amended by subsection (a)(1) of this section, shall not apply to the expenditure of funds appropriated for a fiscal year prior to fiscal year 1987 for the construction, alteration, or acquisition (including site acquisition) of a parking facility at a Veterans' Administration [now Department of Veterans Affairs] medical facility."

-End-

-CITE-

38 USC Sec. 8110

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8110. Operation of medical facilities

-STATUTE-

(a)(1) The Secretary shall establish the total number of hospital beds and nursing home beds in medical facilities over which the Secretary has direct jurisdiction for the care and treatment of eligible veterans. The Secretary shall establish the total number of such beds so as to maintain a contingency capacity to assist the Department of Defense in time of war or national emergency to care for the casualties of such war or national emergency. Of the number of beds authorized pursuant to the preceding sentence, the Secretary shall maintain the availability of such additional beds and facilities in addition to the operating bed level as the Secretary considers necessary for such contingency purposes. The President shall include in the Budget transmitted to the Congress for each fiscal year pursuant to section 1105 of title 31, an amount for medical care and amounts for construction sufficient to maintain the availability of the contingency capacity referred to in the second sentence of this paragraph. The Secretary shall staff and maintain, in such a manner as to ensure the immediate acceptance and timely and complete care of patients, and in a manner consistent with the policies of the Secretary on overtime, sufficient beds and other treatment capacities to accommodate, and provide such care to, eligible veterans applying for admission and found to be in need of hospital care or medical services.

(2) The Secretary shall maintain the bed and treatment capacities of all Department medical facilities, including the staffing required to maintain such capacities, so as to ensure the accessibility and availability of such beds and treatment capacities to eligible veterans in all States, to minimize delays in admissions and in the provision of hospital, nursing home, and domiciliary care, and of medical services furnished pursuant to section 1710(a) of this title, and to ensure that eligible veterans are provided such care and services in an appropriate manner.

(3)(A) The Under Secretary for Health shall at the end of each fiscal year (i) analyze agencywide admission policies and the records of those eligible veterans who apply for hospital care, medical services, and nursing home care, but are rejected or not immediately admitted or provided such care or services, and (ii) review and make recommendations regarding the adequacy of staff levels for compliance with the policy established under subparagraph (C), the adequacy of the established operating bed levels, the geographic distribution of operating beds, the demographic characteristics of the veteran population and the associated need for medical care and nursing home facilities and services in each State, and the proportion of the total number of operating beds that are hospital beds and that are nursing home beds.

(B) After considering the analyses and recommendations of the Under Secretary for Health pursuant to subparagraph (A) of this paragraph for any fiscal year, the Secretary shall report to the committees, on or before December 1 after the close of such fiscal year, on the results of the analysis of the Under Secretary for Health and on the numbers of operating beds and level of treatment capacities required to enable the Department to carry out the

primary function of the Veterans Health Administration. The Secretary shall include in each such report recommendations for (i) the numbers of operating beds and the level of treatment capacities required for the health care of veterans and the maintenance of the contingency capacity referred to in paragraph (1) of this subsection, and (ii) the appropriate staffing and funds therefor.

(C) The Secretary shall, in consultation with the Under Secretary for Health, establish a nationwide policy on the staffing of Department medical facilities in order to ensure that such facilities have adequate staff for the provision to veterans of appropriate, high-quality care and services. The policy shall take into account the staffing levels and mixture of staff skills required for the range of care and services provided veterans in Department facilities.

(4)(A) With respect to each law making appropriations for the Department for any fiscal year (or any part of a fiscal year), there shall be provided to the Department the funded personnel ceiling defined in subparagraph (C) of this paragraph and the funds appropriated therefor.

(B) In order to carry out the provisions of subparagraph (A) of this paragraph, the Director of the Office of Management and Budget shall, with respect to each such law (i) provide to the Department for the fiscal year (or part of a fiscal year) concerned such funded personnel ceiling and the funds necessary to achieve such ceiling, and (ii) submit to the appropriate committees of the Congress and to the Comptroller General of the United States certification that the Director has so provided such ceiling. Not later than the thirtieth day after the enactment of such a law or, in the event of the enactment of such a law more than thirty days prior to the fiscal year for which such law makes such appropriations, not later than the tenth day of such fiscal year, the certification required in the first sentence of this subparagraph shall be submitted, together with a report containing complete information on the personnel ceiling that the Director has provided to the Department for the employees described in subparagraph (C) of this paragraph.

(C) For the purposes of this paragraph, the term "funded personnel ceiling" means, with respect to any fiscal year (or part of a fiscal year), the authorization by the Director of the Office of Management and Budget to employ (under the appropriation accounts for medical care, medical and prosthetic research, and medical administration and miscellaneous operating expenses) not less than the number of employees for the employment of which appropriations have been made for such fiscal year (or part of a fiscal year).

(5) Notwithstanding any other provision of this title or of any other law, funds appropriated for the Department under the appropriation accounts for medical care, medical and prosthetic research, and medical administration and miscellaneous operating expenses may not be used for, and no employee compensated from such funds may carry out any activity in connection with, the conduct of any study comparing the cost of the provision by private contractors with the cost of the provision by the Department of commercial or industrial products and services for the Veterans Health Administration unless such funds have been specifically appropriated for that purpose.

(6)(A) Temporary research personnel of the Veterans Health Administration shall be excluded from any ceiling on full-time equivalent employees of the Department or any other personnel ceiling otherwise applicable to employees of the Department.

(B) For purposes of subparagraph (A) of this paragraph, the term

"temporary research personnel" means personnel who are employed in the Veterans Health Administration in other than a career appointment for work on a research activity and who are not paid by the Department or are paid from funds appropriated to the Department to support such activity.

(b) When the Secretary determines, in accordance with regulations which the Secretary shall prescribe, that a Department facility serves a substantial number of veterans with limited English-speaking ability, the Secretary shall establish and implement procedures, upon the recommendation of the Under Secretary for Health, to ensure the identification of sufficient numbers of individuals on such facility's staff who are fluent in both the language most appropriate to such veterans and in English and whose responsibilities shall include providing guidance to such veterans and to appropriate Department staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

(c) The Secretary shall include in the materials submitted to Congress each year in support of the budget of the Department for the next fiscal year a report on activities and proposals involving contracting for performance by contractor personnel of work previously performed by Department employees. The report shall -

- (1) identify those specific activities that are currently performed at a Department facility by more than 10 Department employees which the Secretary proposes to study for possible contracting involving conversion from performance by Department employees to performance by employees of a contractor; and
- (2) identify those specific activities that have been contracted for performance by contractor employees during the prior fiscal year (shown by location, subject, scope of contracts, and savings) and shall describe the effect of such contracts on the quality of delivery of health services during such year.

(d) The Secretary may not in any fiscal year close more than 50 percent of the beds within a bed section (of 20 or more beds) of a Department medical center unless the Secretary first submits to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report providing a justification for the closure. No action to carry out such closure may be taken after the submission of such report until the end of the 21-day period beginning on the date of the submission of the report.

(e) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives, not later than January 20 of each year, a report documenting by network for the preceding fiscal year the following:

- (1) The number of medical service and surgical service beds, respectively, that were closed during that fiscal year and, for each such closure, a description of the changes in delivery of services that allowed such closure to occur.
- (2) The number of nursing home beds that were the subject of a mission change during that fiscal year and the nature of each such mission change.

(f) For purposes of this section:

- (1) The term "closure", with respect to beds in a medical center, means ceasing to provide staffing for, and to operate, those beds. Such term includes converting the provision of such bed care from care in a Department facility to care under contract arrangements.
- (2) The term "bed section", with respect to a medical center,

means psychiatric beds (including beds for treatment of substance abuse and post-traumatic stress disorder), intermediate, neurology, and rehabilitation medicine beds, extended care (other than nursing home) beds, and domiciliary beds.

(3) The term "justification", with respect to closure of beds, means a written report that includes the following:

(A) An explanation of the reasons for the determination that the closure is appropriate and advisable.

(B) A description of the changes in the functions to be carried out and the means by which such care and services would continue to be provided to eligible veterans.

(C) A description of the anticipated effects of the closure on veterans and on their access to care.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 59, Sec. 5010; amended Pub. L. 96-151, title III, Sec. 301(a), Dec. 20, 1979, 93 Stat. 1095; Pub. L. 97-66, title VI, Sec. 601(b), Oct. 17, 1981, 95 Stat. 1033; Pub. L. 97-72, title I, Sec. 108, Nov. 3, 1981, 95 Stat. 1053; Pub. L. 97-306, title IV, Sec. 409(b), Oct. 14, 1982, 96 Stat. 1446; Pub. L. 97-452, Sec. 2(e)(4), Jan. 12, 1983, 96 Stat. 2479; Pub. L. 98-160, title VII, Sec. 702(19), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 98-528, title I, Sec. 102, Oct. 19, 1984, 98 Stat. 2688; Pub. L. 99-576, title VII, Sec. 702(15), Oct. 28, 1986, 100 Stat. 3302; Pub. L. 100-322, title II, Sec. 222(a), title IV, Sec. 401(a), May 20, 1988, 102 Stat. 531, 543; renumbered Sec. 8110 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Secs. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XI, Sec. 1103, title XII, Sec. 1201(b)(1), (d)(17), (g)(7), Nov. 2, 1994, 108 Stat. 4681, 4682, 4684, 4687; Pub. L. 104-66, title I, Sec. 1141(c), Dec. 21, 1995, 109 Stat. 726; Pub. L. 104-262, title I, Sec. 101(e)(4), title III, Sec. 305, Oct. 9, 1996, 110 Stat. 3181, 3194; Pub. L. 106-117, title III, Sec. 301, Nov. 30, 1999, 113 Stat. 1571; Pub. L. 107-135, title I, Sec. 124, Jan. 23, 2002, 115 Stat. 2452; Pub. L. 107-314, div. A, title VII, Sec. 726(a), Dec. 2, 2002, 116 Stat. 2599.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5001(a)(2), (3), (h) of this title prior to the general revision of this subchapter by Pub. L. 96-22.

AMENDMENTS

2002 - Subsec. (a)(1). Pub. L. 107-314 struck out "at not more than 125,000 and not less than 100,000" before period at end of first sentence, "shall operate and maintain a total of not less than 90,000 hospital beds and nursing home beds and" before "shall maintain the availability" in third sentence, and "to enable the Department to operate and maintain a total of not less than 90,000 hospital and nursing home beds in accordance with this paragraph and" after "construction sufficient" in fourth sentence.

Pub. L. 107-135, Sec. 124(a)(1), inserted "and in a manner consistent with the policies of the Secretary on overtime," after "complete care of patients," in fifth sentence.

Subsec. (a)(2). Pub. L. 107-135, Sec. 124(a)(2), inserted ", including the staffing required to maintain such capacities," after

"all Department medical facilities", substituted ", to minimize" for "and to minimize", and inserted before period at end ", and to ensure that eligible veterans are provided such care and services in an appropriate manner".

Subsec. (a)(3)(A). Pub. L. 107-135, Sec. 124(b)(1), inserted "the adequacy of staff levels for compliance with the policy established under subparagraph (C)," after "regarding".

Subsec. (a)(3)(C). Pub. L. 107-135, Sec. 124(b)(2), added subpar. (C).

1999 - Subsecs. (d) to (f). Pub. L. 106-117 added subsecs. (d) to (f).

1996 - Subsec. (a)(2). Pub. L. 104-262, Sec. 101(e)(4), substituted "section 1710(a)" for "section 1712".

Subsec. (c). Pub. L. 104-262, Sec. 305, amended subsec. (c) generally, substituting provisions consisting of an introductory par. and pars. (1) and (2), relating to reports on activities and proposals involving contracting for performance by contractor personnel of work previously performed by Department employees for provisions consisting of pars. (1) to (9), relating to conversion of activities at health-care facilities from those performed by Federal employees to those performed by Government contractors.

1995 - Subsec. (a)(4). Pub. L. 104-66 substituted "subparagraph (C)" for "subparagraph (D)" in subpars. (A) and (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: "Whenever the Director of the Office of Management and Budget is required to submit a certification under subparagraph (B) of this paragraph, the Comptroller General shall submit to the appropriate committees of the Congress a report stating the Comptroller General's opinion as to whether the Director has complied with the requirements of that subparagraph. The Comptroller General shall submit the report not later than fifteen days after the end of the period specified in such subparagraph for the Director to submit the certification."

1994 - Subsec. (a)(3)(B), (5), (6). Pub. L. 103-446, Sec. 1201(b)(1), substituted "Veterans Health Administration" for "Department of Medicine and Surgery" wherever appearing.

Subsec. (c)(3)(B). Pub. L. 103-446, Sec. 1201(d)(17), substituted "section 513 or 7409" for "section 213 or 4117".

Subsec. (c)(7). Pub. L. 103-446, Sec. 1201(g)(7), which provided for striking out obsolete or executed provisions and directed the amendment of subsec. (c) by striking out par. (7), was not executed because of the prior amendment of subsec. (c) by Pub. L. 103-446, Sec. 1103. See below.

Pub. L. 103-446, Sec. 1103, added par. (7) and struck out former par. (7) which read as follows: "Not later than February 1, 1984, and February 1 of each of the five succeeding years, the Secretary shall submit a written report to Congress describing the extent to which activities at Department health-care facilities were performed by contractors during the preceding fiscal year and the actual cost savings resulting from such contracts."

Subsec. (c)(8), (9). Pub. L. 103-446, Sec. 1103, added pars. (8) and (9).

1992 - Subsecs. (a)(3), (b), (c)(1), (3)(B). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" wherever appearing.

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5010 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 5(c)(1), substituted "1712" for "612" in par. (2).

Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsec. (b). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Subsec. (c). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Pub. L. 102-40, Sec. 402(d)(1), substituted "8111, 8111A, or 8153" for "5011, 5011A, or 5053" in par. (3)(A).

1988 - Subsec. (a)(6). Pub. L. 100-322, Sec. 222(a), added par. (6).

Subsec. (c)(2). Pub. L. 100-322, Sec. 401(a), inserted "responsive bids are received from at least two responsible, financially autonomous bidders and" after "only if".

1986 - Subsec. (a)(1). Pub. L. 99-576 substituted "125,000 and not less than 100,000" for "one hundred and twenty-five thousand and not less than one hundred thousand" and "90,000" for "ninety thousand" in two places.

1984 - Subsec. (a)(4)(C). Pub. L. 98-528 substituted provision requiring the Comptroller General to submit a report stating the Comptroller General's opinion as to whether the Director has complied with subpar. (B) not later than fifteen days after end of period specified in that subparagraph for Director to submit required certification for provision which had required the Comptroller General to submit a report stating the Comptroller General's opinion as to whether the Director has complied with the requirements of any law making appropriations for the Veterans' Administration for any fiscal year or any part thereof regarding funded personnel ceilings not later than forty-fifth day after enactment of each such law.

1983 - Subsec. (a)(1). Pub. L. 97-452 substituted "section 1105 of title 31" for "section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a))".

Subsec. (c)(2)(B). Pub. L. 98-160 substituted "quantity and quality" for "quantity or quality".

1982 - Subsec. (c). Pub. L. 97-306 added subsec. (c).

1981 - Subsec. (a)(1). Pub. L. 97-72, Sec. 108(a)(1), struck out provision authorizing the Administrator, subject to the approval of the President to establish and operate not less than 125,000 hospital beds in medical facilities over which the Administrator has direct jurisdiction for the care and treatment of eligible veterans and substituted therefor provisions directing the Administrator to establish a total number of hospital beds and nursing home beds in medical facilities over which the Administrator has direct jurisdiction for the care and treatment of eligible veterans at not more than one hundred and twenty-five thousand and not less than one hundred thousand, and provided that the Administrator establish the total number of such beds so as to maintain a contingency capacity to assist the Department of Defense in time of war or national emergency to care for the casualties of such war or national emergency, that of the number of beds authorized pursuant to the preceding sentence, the Administrator operate and maintain a total of not less than ninety thousand hospital beds and nursing home beds and maintain the availability of such additional beds and facilities in addition to the operating bed level as the Administrator considers necessary for such contingency purposes, and that the President include in the Budget

transmitted to the Congress for each fiscal year pursuant to section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a)), an amount for medical care and amounts for construction.

Subsec. (a)(3). Pub. L. 97-72, Sec. 108(a)(2), struck out provision requiring that the Chief Medical Director periodically analyze agencywide admission policies and the records of those eligible veterans who apply for hospital care and medical services and annually advise each committee of the results and the added requirements which those results indicate and substituted therefor provisions that the Chief Medical Director, at the end of each fiscal year, (i) analyze agencywide admission policies and the records of those eligible veterans who apply for hospital care, medical services and nursing home care, but are rejected or not immediately admitted or provided such care or services, and (ii) review and made recommendations regarding the adequacy of the established operating bed levels, the geographic distribution of operating beds, the demographic characteristics of the veteran population and the associated need for medical care and nursing home facilities and services in each State, and the proportion of the total number of operating beds that are hospital beds and that are nursing home beds, and that, after considering the analyses and recommendations of the Chief Medical Director pursuant to subparagraph (A) of this paragraph for any fiscal year, the Administrator report to the committees, on or before December 1 after the close of such fiscal year, on the results of the analysis of the Chief Medical Director and on the required number of beds and the level of treatment capacities required.

Subsec. (a)(4)(A). Pub. L. 97-66, Sec. 601(b)(1)(A), inserted "for any fiscal year (or any part of a fiscal year)" after "With respect to each law making appropriations for the Veterans' Administration".

Subsec. (a)(4)(B). Pub. L. 97-66, Sec. 601(b)(1)(B), inserted "(or part of a fiscal year)" after "provide to the Veterans' Administration for the fiscal year".

Subsec. (a)(4)(D). Pub. L. 97-66, Sec. 601(b)(1)(B), inserted "(or part of a fiscal year)" after "fiscal year" in two places.

Subsec. (a)(5). Pub. L. 97-66, Sec. 601(b)(2), added par. (5).

Subsecs. (b), (c). Pub. L. 97-72, Sec. 108(b), redesignated subsec. (c) as (b). Former subsec. (b), authorizing the Administrator to establish, subject to the approval of the President, not less than twelve thousand beds during fiscal year 1980, and during each fiscal year thereafter, for the furnishing of nursing home care to eligible veterans in facilities over which the Administrator has direct jurisdiction, was struck out.

1979 - Subsec. (a)(4). Pub. L. 96-151 added par. (4).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title VII, Sec. 726(b), Dec. 2, 2002, 116 Stat. 2599, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2003."

EFFECTIVE DATE OF 1988 AMENDMENT

Section 222(b) of Pub. L. 100-322 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years after fiscal year 1987."

Section 401(b) of Pub. L. 100-322 provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to the awarding of contracts under solicitations issued after the date of the enactment of this Act [May 20, 1988]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 601(b)(1) of Pub. L. 97-66 effective Oct. 1, 1981, see section 701(b)(4) of Pub. L. 97-66, set out as a note under section 1114 of this title.

Amendment by section 601(b)(2) of Pub. L. 97-66 effective Oct. 17, 1981, see section 701(b)(1) of Pub. L. 97-66, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 301(b) of Pub. L. 96-151 provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to Public Law 96-103 [Nov. 5, 1979, 93 Stat. 771], but, with respect to such Public Law, the certification and report required by subparagraph (B) of paragraph (4) of section 5010 [now 8110] of title 38, United States Code (as added by such amendment), and the report required by subparagraph (C) of such paragraph (as added by such amendment) shall be submitted to the appropriate committees of the Congress not later than January 15, 1980, and February 1, 1980, respectively."

INVENTORY OF MEDICAL WASTE MANAGEMENT ACTIVITIES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES

Pub. L. 108-422, title VI, Sec. 602, Nov. 30, 2004, 118 Stat. 2397, provided that:

"(a) Inventory. - The Secretary of Veterans Affairs shall establish and maintain a national inventory of medical waste management activities in the health care facilities of the Department of Veterans Affairs. The inventory shall include the following:

"(1) A statement of the current national policy of the Department on managing and disposing of medical waste, including regulated medical waste in all its forms.

"(2) A description of the program of each geographic service area of the Department to manage and dispose of medical waste, including general medical waste and regulated medical waste, with a description of the primary methods used in those programs and the associated costs of those programs, with cost information shown separately for in-house costs (including full-time equivalent employees) and contract costs.

"(b) Report. - Not later than June 30, 2005, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on medical waste management activities in the facilities of the Department of Veterans Affairs. The report shall include the following:

"(1) The inventory established under subsection (a), including all the matters specified in that subsection.

"(2) A listing of each violation of medical waste management and disposal regulations reported at any health care facility of the Department over the preceding five years by any Federal or State agency, along with an explanation of any remedial or other action taken by the Secretary in response to each such reported violation.

"(3) A description of any plans to modernize, consolidate, or otherwise improve the management of medical waste and disposal programs at health care facilities of the Department, including the projected costs associated with such plans and any barriers to achieving goals associated with such plans.

"(4) An assessment or evaluation of the available methods of disposing of medical waste and identification of which of those methods are more desirable from an environmental perspective in that they would be least likely to result in contamination of air

or water or otherwise cause future cleanup problems."

CONVERSION OF UNDERUSED SPACE TO DOMICILIARY-CARE BEDS

Section 136 of Pub. L. 100-322 directed Administrator, not later than June 1, 1988, to convert underused space located in facilities under jurisdiction of Administrator in urban areas with significant numbers of homeless veterans into 500 domiciliary-care beds to be used for care of veterans in need of domiciliary care, primarily homeless veterans.

POLICY OF COMPREHENSIVE VETERANS' HEALTH-CARE SYSTEM

Section 409(a) of Pub. L. 97-306 provided that: "It is the policy of the United States that the Veterans' Administration -

"(1) shall maintain a comprehensive, nationwide health-care system for the direct provision of quality health-care services to eligible veterans; and

"(2) shall operate such system through cost-effective means that are consistent with carrying out fully the functions of the Department of Medicine and Surgery of the Veterans' Administration under title 38, United States Code."

-End-

-CITE-

38 USC Sec. 8111

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8111. Sharing of Department of Veterans Affairs and Department of Defense health care resources

-STATUTE-

(a) Required Coordination and Sharing of Health Care Resources. - The Secretary of Veterans Affairs and the Secretary of Defense shall enter into agreements and contracts for the mutually beneficial coordination, use, or exchange of use of the health care resources of the Department of Veterans Affairs and the Department of Defense with the goal of improving the access to, and quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

(b) Joint Requirements for Secretaries of Veterans Affairs and Defense. - To facilitate the mutually beneficial coordination, use, or exchange of use of the health care resources of the two Departments, the two Secretaries shall carry out the following functions:

(1) Develop and publish a joint strategic vision statement and a joint strategic plan to shape, focus, and prioritize the coordination and sharing efforts among appropriate elements of the two Departments and incorporate the goals and requirements of the joint sharing plan into the strategic plan of each Department under section 306 of title 5 and the performance plan of each

Department under section 1115 of title 31.

(2) Jointly fund the Department of Veterans Affairs-Department of Defense Joint Executive Committee under section 320 of this title.

(3) Continue to facilitate and improve sharing between individual Department of Veterans Affairs and Department of Defense health care facilities, but giving priority of effort to initiatives (A) that improve sharing and coordination of health resources at the intraregional and nationwide levels, and (B) that improve the ability of both Departments to provide coordinated health care.

(4) Establish a joint incentive program under subsection (d).

[(c) Repealed. Pub. L. 108-136, div. A, title V, Sec. 583(b)(1), Nov. 24, 2003, 117 Stat. 1491.]

(d) Joint Incentives Program. - (1) Pursuant to subsection (b)(4), the two Secretaries shall carry out a program to identify, provide incentives to, implement, fund, and evaluate creative coordination and sharing initiatives at the facility, intraregional, and nationwide levels. The program shall be administered by the Department of Veterans Affairs-Department of Defense Joint Executive Committee, under procedures jointly prescribed by the two Secretaries.

(2) To facilitate the incentive program, there is established in the Treasury a fund to be known as the "DOD-VA Health Care Sharing Incentive Fund". Each Secretary shall annually contribute to the fund a minimum of \$15,000,000 from the funds appropriated to that Secretary's Department. Such funds shall remain available until expended and shall be available for any purpose authorized by this section.

(3) The program under this subsection shall terminate on September 30, 2015.

(e) Guidelines and Policies for Implementation of Coordination and Sharing Recommendations, Contracts, and Agreements. - (1) To implement the recommendations made by the Department of Veterans Affairs-Department of Defense Joint Executive Committee with respect to health care resources, as well as to carry out other health care contracts and agreements for coordination and sharing initiatives as they consider appropriate, the two Secretaries shall jointly issue guidelines and policy directives. Such guidelines and policies shall provide for coordination and sharing that -

(A) is consistent with the health care responsibilities of the Department of Veterans Affairs under this title and with the health care responsibilities of the Department of Defense under chapter 55 of title 10;

(B) will not adversely affect the range of services, the quality of care, or the established priorities for care provided by either Department; and

(C) will not reduce capacities in certain specialized programs of the Department of Veterans Affairs that the Secretary is required to maintain in accordance with section 1706(b) of this title.

(2) To facilitate the sharing and coordination of health care services between the two Departments, the two Secretaries shall jointly develop and implement guidelines for a standardized, uniform payment and reimbursement schedule for those services. Such schedule shall be revised periodically as necessary. The two Secretaries may on a case-by-case basis waive elements of the schedule if they jointly agree that such a waiver is in the best interests of both Departments.

(3)(A) The guidelines established under paragraph (1) shall authorize the heads of individual Department of Defense and Department of Veterans Affairs medical facilities and service regions to enter into health care resources coordination and sharing agreements.

(B) Under any such agreement, an individual who is a primary beneficiary of one Department may be provided health care, as provided in the agreement, at a facility or in the service region of the other Department that is a party to the sharing agreement.

(C) Each such agreement shall identify the health care resources to be shared.

(D) Each such agreement shall provide, and shall specify procedures designed to ensure, that the availability of direct health care to individuals who are not primary beneficiaries of the providing Department is (i) on a referral basis from the facility or service region of the other Department, and (ii) does not (as determined by the head of the providing facility or region) adversely affect the range of services, the quality of care, or the established priorities for care provided to the primary beneficiaries of the providing Department.

(E) Each such agreement shall provide that a providing Department or service region shall be reimbursed for the cost of the health care resources provided under the agreement and that the rate of such reimbursement shall be as determined in accordance with paragraph (2).

(F) Each proposal for an agreement under this paragraph shall be effective (i) on the 46th day after the receipt of such proposal by the Committee, unless earlier disapproved, or (ii) if earlier approved by the Committee, on the date of such approval.

(G) Any funds received through such a uniform payment and reimbursement schedule shall be credited to funds that have been allotted to the facility of either Department that provided the care or services, or is due the funds from, any such agreement.

(f) Annual Joint Report. - (1) At the time the President's budget is transmitted to Congress in any year pursuant to section 1105 of title 31, the two Secretaries shall submit to Congress a joint report on health care coordination and sharing activities under this section during the fiscal year that ended during the previous calendar year.

(2) Each report under this section shall include the following:

(A) The guidelines prescribed under subsection (e) (and any revision of such guidelines).

(B) The assessment of further opportunities identified by the Department of Veterans Affairs-Department of Defense Joint Executive Committee under subsection (d)(3) of section 320 of this title for the sharing of health-care resources between the two Departments.

(C) Any recommendation made by that committee under subsection (c)(2) of that section during that fiscal year.

(D) A review of the sharing agreements entered into under subsection (e) and a summary of activities under such agreements during such fiscal year and a description of the results of such agreements in improving access to, and the quality and cost effectiveness of, the health care provided by the Veterans Health Administration and the Military Health System to the beneficiaries of both Departments.

(E) A summary of other planning and activities involving either Department in connection with promoting the coordination and sharing of Federal health-care resources during the preceding fiscal year.

(F) Such recommendations for legislation as the two Secretaries

consider appropriate to facilitate the sharing of health-care resources between the two Departments.

(3) In addition to the matters specified in paragraph (2), the two Secretaries shall include in the annual report under this subsection an overall status report of the progress of health resources sharing between the two Departments as a consequence of subtitle C of title VII of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314) and of other sharing initiatives taken during the period covered by the report. Such status report shall indicate the status of such sharing and shall include appropriate data as well as analyses of that data. The annual report shall include the following:

(A) Enumerations and explanations of major policy decisions reached by the two Secretaries during the period covered by the report period with respect to sharing between the two Departments.

(B) A description of progress made in new ventures or particular areas of sharing and coordination that would be of policy interest to Congress consistent with the intent of such subtitle.

(C) A description of enhancements of access to care of beneficiaries of both Departments that came about as a result of new sharing approaches brought about by such subtitle.

(D) A description of proposals for which funds are provided through the joint incentives program under subsection (d), together with a description of their results or status at the time of the report, including access improvements, savings, and quality-of-care enhancements they brought about, and a description of any additional use of funds made available under subsection (d).

(4) In addition to the matters specified in paragraphs (2) and (3), the two Secretaries shall include in the annual report under this subsection for each year through 2008 the following:

(A) A description of the measures taken, or planned to be taken, to implement the health resources sharing project under section 722 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314) and any cost savings anticipated, or cost sharing achieved, at facilities participating in the project, including information on improvements in access to care, quality, and timeliness, as well as impediments encountered and legislative recommendations to ameliorate such impediments.

(B) A description of the use of the waiver authority provided by section 722(d)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314), including -

(i) a statement of the numbers and types of requests for waivers under that section of administrative policies that have been made during the period covered by the report and, for each such request, an explanation of the content of each request, the intended purpose or result of the requested waiver, and the disposition of each request; and

(ii) descriptions of any new administrative policies that enhance the success of the project.

(5) In addition to the matters specified in paragraphs (2), (3), and (4), the two Secretaries shall include in the annual report under this subsection for each year through 2009 a report on the pilot program for graduate medical education under section 725 of

the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314), including activities under the program during the preceding year and each Secretary's assessment of the efficacy of providing education and training under that program.

(g) Definitions. - For the purposes of this section:

(1) The term "beneficiary" means a person who is a primary beneficiary of the Department of Veterans Affairs or of the Department of Defense.

(2) The term "direct health care" means health care provided to a beneficiary in a medical facility operated by the Department of Veterans Affairs or the Department of Defense.

(3) The term "head of a medical facility" (A) with respect to a medical facility of the Department of Veterans Affairs, means the director of the facility, and (B) with respect to a medical facility of the Department of Defense, means the medical or dental officer in charge or the contract surgeon in charge.

(4) The term "health-care resource" includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, services under sections 1782 and 1783 of this title, any other health-care service, and any health-care support or administrative resource.

(5) The term "primary beneficiary" (A) with respect to the Department means a person who is eligible under this title (other than under section 1782, 1783, or 1784 or subsection (d) of this section) or any other provision of law for care or services in Department medical facilities, and (B) with respect to the Department of Defense, means a member or former member of the Armed Forces who is eligible for care under section 1074 of title 10.

(6) The term "providing Department" means the Department of Veterans Affairs, in the case of care or services furnished by a facility of the Department of Veterans Affairs, and the Department of Defense, in the case of care or services furnished by a facility of the Department of Defense.

(7) The term "service region" means a geographic service area of the Veterans Health Administration, in the case of the Department of Veterans Affairs, and a service region, in the case of the Department of Defense.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 60, Sec. 5011; amended Pub. L. 97-174, Sec. 3(a), (b)(1), May 4, 1982, 96 Stat. 70, 73; Pub. L. 97-452, Sec. 2(e)(4), Jan. 12, 1983, 96 Stat. 2479; renumbered Sec. 8111 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Secs. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, Sec. 1201(g)(8), (i)(10), Nov. 2, 1994, 108 Stat. 4687, 4688; Pub. L. 107-135, title II, Sec. 208(e)(6), Jan. 23, 2002, 115 Stat. 2464; Pub. L. 107-314, div. A, title VII, Sec. 721(a)(1), Dec. 2, 2002, 116 Stat. 2589; Pub. L. 108-136, div. A, title V, Sec. 583(b), (c), Nov. 24, 2003, 117 Stat. 1491, 1492; Pub. L. 108-422, title VI, Sec. 605, Nov. 30, 2004, 118 Stat. 2399; Pub. L. 109-163, div. A, title VII, Sec. 747(a), title X, Sec. 1056(g), Jan. 6, 2006, 119 Stat. 3363, 3440; Pub. L. 109-364, div. A, title VII, Sec. 743, Oct. 17, 2006, 120 Stat. 2308; Pub. L. 109-444, Sec. 8(a)(6), (7), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109-461, title X, Secs. 1004(a)(6), (7), 1006(b), Dec. 22, 2006, 120 Stat. 3465, 3468; Pub. L. 111-84, div. A, title XVII, Sec. 1706, Oct. 28, 2009,

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REFERENCES IN TEXT

The Bob Stump National Defense Authorization Act for Fiscal Year 2003, referred to in subsec. (f)(3), is Pub. L. 107-314, Dec. 2, 2002, 116 Stat. 2458. Subtitle C (Secs. 721-726) of title VII of division A of the Act amended this section, section 8110 of this title, and section 1104 of Title 10, Armed Forces, enacted provisions set out as notes under this section, section 8110 of this title, and sections 1074g and 1094a of Title 10, and repealed provisions set out as a note under section 1094a of Title 10. Section 722 of the Act is set out as a note under this section. Section 725 of the Act is set out as a note under section 1094a of Title 10. For complete classification of this Act to the Code, see Tables.

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5003 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

AMENDMENTS

2009 - Subsec. (d)(3). Pub. L. 111-84 substituted "September 30, 2015" for "September 30, 2010".

2006 - Pub. L. 109-461, Sec. 1006(b), provided that as of the enactment of Pub. L. 109-461, the amendments made by Pub. L. 109-444 were deemed for all purposes not to have taken effect and that Pub. L. 109-444 ceased to be in effect. See Amendment notes below and section 1006(b) of Pub. L. 109-461, set out as a Coordination of Provisions With Pub. L. 109-444 note under section 101 of this title.

Subsec. (b)(1). Pub. L. 109-461, Sec. 1004(a)(6), substituted "into the strategic plan of each Department under section 306 of title 5 and the performance plan of each Department under section 1115 of title 31" for "into the strategic and performance plan of each Department under the Government Performance and Results Act of 1993".

Pub. L. 109-444, Sec. 8(a)(6), which substituted "into the strategic plan of each Department under section 306 of title 5 and the performance plan of each Department under section 1115 of title 31" for "into the strategic and performance plan of each Department under the Government Performance and Results Act of 1993", was terminated by Pub. L. 109-461, Sec. 1006(b). See Amendment notes above.

Pub. L. 109-163, Sec. 1056(g), inserted "of 1993" after "Government Performance and Results Act".

Subsec. (d)(2). Pub. L. 109-461, Sec. 1004(a)(7)(A), struck out "effective October 1, 2003," after "the incentive program,".

Pub. L. 109-444, Sec. 8(a)(7)(A), which struck out "effective October 1, 2003," after "the incentive program," was terminated by Pub. L. 109-461, Sec. 1006(b). See Amendment notes above.

Subsec. (d)(3). Pub. L. 109-364 substituted "September 30, 2010" for "September 30, 2007".

Pub. L. 109-163, Sec. 747(a), redesignated par. (4) as (3) and struck out former par. (3) which provided for an annual review and report by the Comptroller General of the implementation and effectiveness of the incentives program under this subsection.

Subsec. (d)(4). Pub. L. 109-163, Sec. 747(a)(2), redesignated

par. (4) as (3).

Subsec. (e)(2). Pub. L. 109-461, Sec. 1004(a)(7)(B), struck out "shall be implemented no later than October 1, 2003, and" after "Such schedule" in second sentence and ", following implementation of the schedule," after "The two Secretaries" in third sentence.

Pub. L. 109-444, Sec. 8(a)(7)(B), which struck out "shall be implemented no later than October 1, 2003, and" after "Such schedule" in second sentence and ", following implementation of the schedule," after "The two Secretaries" in third sentence, was terminated by Pub. L. 109-461, Sec. 1006(b). See Amendment notes above.

2004 - Subsec. (d)(2). Pub. L. 108-422 inserted "and shall be available for any purpose authorized by this section" before period at end.

2003 - Subsec. (b)(2). Pub. L. 108-136, Sec. 583(b)(2)(A), substituted "the Department of Veterans Affairs-Department of Defense Joint Executive Committee under section 320 of this title" for "the interagency committee provided for under subsection (c)".

Subsec. (c). Pub. L. 108-136, Sec. 583(b)(1), struck out subsec. (c) which related to establishment of Department of Veterans Affairs-Department of Defense Health Executive Committee.

Subsec. (d)(1). Pub. L. 108-136, Sec. 583(b)(2)(B), substituted "Department of Veterans Affairs-Department of Defense Joint Executive Committee" for "Committee established in subsection (c)".

Subsec. (e)(1). Pub. L. 108-136, Sec. 583(b)(2)(C), substituted "Department of Veterans Affairs-Department of Defense Joint Executive Committee with respect to health care resources" for "Committee under subsection (c)(2)" in introductory provisions.

Subsec. (f)(2)(B), (C). Pub. L. 108-136, Sec. 583(b)(2)(D), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

"(B) The assessment of further opportunities identified under subparagraph (C) of subsection (c)(5) for the sharing of health-care resources between the two Departments.

"(C) Any recommendation made under subsection (c)(4) during such fiscal year."

Subsec. (f)(3), (4)(A), (B), (5). Pub. L. 108-136, Sec. 583(c), inserted "(Public Law 107-314)" after "for Fiscal Year 2003".

2002 - Pub. L. 107-314 amended section catchline and text generally. Prior to amendment, text related to agreements and contracts for mutual use or exchange of use of hospital and domiciliary facilities and other resources by the Secretary of Veterans Affairs and the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy and provided for establishment of the Department/Department of Defense Health-Care Resources Sharing Committee.

Subsec. (g)(4). Pub. L. 107-135, Sec. 208(e)(6)(A), inserted "services under sections 1782 and 1783 of this title" after "of this title,".

Subsec. (g)(5). Pub. L. 107-135, Sec. 208(e)(6)(B), substituted "section 1782, 1783, or 1784" for "section 1711(b) or 1713".

1994 - Subsec. (b)(2). Pub. L. 103-446, Sec. 1201(g)(8)(A), in concluding provisions, substituted "During odd-numbered fiscal years" for "During fiscal years 1982 and 1983" and "During even-numbered fiscal years" for "During fiscal year 1984" and struck out after third sentence "Thereafter, the chairmanship of the Committee shall alternate each fiscal year between the Under Secretary for Health and the Assistant Secretary."

Subsec. (b)(4). Pub. L. 103-446, Sec. 1201(g)(8)(B), substituted "At such times as" for "Within nine months of the date of the enactment of this subsection and at such times thereafter as".

Subsec. (f)(6). Pub. L. 103-446, Sec. 1201(i)(10), inserted "of Defense" after second reference to "Secretary".

1992 - Subsecs. (b)(2), (d)(5), (e). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" wherever appearing.

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5011 of this title as this section.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Sharing of Department" for "Sharing of Veterans' Administration" in section catchline.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Pub. L. 102-40, Sec. 402(d)(1), substituted "8110(a)(1)" for "5010(a)(1)".

Subsec. (b). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in par. (4).

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing in pars. (1) and (2)(A).

Subsec. (c)(1). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (f). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and in par. (6).

Subsec. (g). Pub. L. 102-83, Sec. 5(c)(1), substituted "1701" for "601" in par. (4) and "1711(b) or 1713" for "611(b) or 613" in par. (5).

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1983 - Subsec. (f). Pub. L. 97-452 substituted "section 1105 of title 31" for "section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a))".

1982 - Pub. L. 97-174, Sec. 3(b)(1), substituted "Sharing of Veterans' Administration and Department of Defense health-care resources" for "Use of Armed Forces facilities" in section catchline.

Subsec. (a). Pub. L. 97-174, Sec. 3(a)(1), (2), designated existing provisions as subsec. (a) and substituted "material, and other resources as may be needed to operate such facilities properly, except that the Administrator may not enter into an agreement that would result (1) in a permanent reduction in the total number of authorized Veterans' Administration hospital beds and nursing home beds to a level below the minimum number of such beds required by section 5010(a)(1) of this title to be authorized, or (2) in a permanent reduction in the total number of such beds operated and maintained to a level below the minimum number of such beds required by such section to be operated and maintained" for "and material as may be needed to operate such facilities properly, or for the transfer, without reimbursement of appropriations, of facilities, supplies, equipment, or material necessary and proper for authorized care for veterans, except that at no time shall the Administrator enter into any agreement which will result in a permanent reduction of Veterans' Administration hospital and domiciliary beds below the number established or approved on June 22, 1944, plus the estimated number required to meet the load of eligibles under this title,".

Subsecs. (b) to (g). Pub. L. 97-174, Sec. 3(a)(3), added subsecs.

(b) to (g).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title VII, Sec. 721(c), Dec. 2, 2002, 116 Stat. 2595, provided that: "The amendments made by this section [amending this section and section 1104 of Title 10, Armed Forces] shall take effect on October 1, 2003."

GUIDELINES FOR COMBINED MEDICAL FACILITIES OF THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 110-417, [div. A], title VII, Sec. 706, Oct. 14, 2008, 122 Stat. 4500, provided that: "Before a facility may be designated a combined Federal medical facility of the Department of Defense and the Department of Veterans Affairs, the Secretary of Defense and the Secretary of Veterans Affairs shall execute a signed agreement that specifies, at a minimum, a binding operational agreement on the following areas:

- "(1) Governance.
- "(2) Patient priority categories.
- "(3) Budgeting.
- "(4) Staffing and training.
- "(5) Construction.
- "(6) Physical plant management.
- "(7) Contingency planning.
- "(8) Quality assurance.
- "(9) Information technology."

CONSIDERATION OF COMBINATION OF MILITARY MEDICAL TREATMENT FACILITIES AND HEALTH CARE FACILITIES OF DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 108-375, div. B, title XXVIII, Sec. 2811, Oct. 28, 2004, 118 Stat. 2128, provided that:

"(a) Department of Defense Consideration of Joint Construction. - When considering any military construction project for the construction of a new military medical treatment facility in the United States or a territory or possession of the United States, the Secretary of Defense shall consult with the Secretary of Veterans Affairs regarding the feasibility of carrying out a joint project to construct a medical facility that -

"(1) could serve as a facility for health-resources sharing between the Department of Defense and the Department of Veterans Affairs; and

"(2) would be no more costly to each Department to construct and operate than separate facilities for each Department.

"(b) Department of Veterans Affairs Consideration of Joint Construction. - When considering the construction of a new or replacement medical facility for the Department of Veterans Affairs, the Secretary of Veterans Affairs shall consult with the Secretary of Defense regarding the feasibility of carrying out a joint project to construct a medical facility that -

"(1) could serve as a facility for health-resources sharing between the Department of Veterans Affairs and the Department of Defense; and

"(2) would be no more costly to each Department to construct and operate than separate facilities for each Department."

HEALTH CARE RESOURCES SHARING AND COORDINATION PROJECT

Pub. L. 107-314, div. A, title VII, Sec. 722, Dec. 2, 2002, 116 Stat. 2595, as amended by Pub. L. 109-163, div. A, title VII, Sec. 747(b), Jan. 6, 2006, 119 Stat. 3363, provided that:

"(a) Establishment. - (1) The Secretary of Veterans Affairs and

the Secretary of Defense shall conduct a health care resources sharing project to serve as a test for evaluating the feasibility, and the advantages and disadvantages, of measures and programs designed to improve the sharing and coordination of health care and health care resources between the Department of Veterans Affairs and the Department of Defense. The project shall be carried out, as a minimum, at the sites identified under subsection (b).

"(2) Reimbursement between the two Departments with respect to the project under this section shall be made in accordance with the provisions of section 8111(e)(2) of title 38, United States Code, as amended by section 721(a).

"(b) Site Identification. - (1) Not later than 90 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretaries shall jointly identify not less than three sites for the conduct of the project under this section.

"(2) For purposes of this section, a site at which the resource sharing project shall be carried out is an area in the United States in which -

"(A) one or more military treatment facilities and one or more VA health care facilities are situated in relative proximity to each other, including facilities engaged in joint ventures as of the date of the enactment of this Act; and

"(B) for which an agreement to coordinate care and programs for patients at those facilities could be implemented not later than October 1, 2004.

"(c) Conduct of Project. - (1) At sites at which the project is conducted, the Secretaries shall provide a test of a coordinated management system for the military treatment facilities and VA health care facilities participating in the project. Such a coordinated management system for a site shall include at least one of the elements specified in paragraph (2), and each of the elements specified in that paragraph must be included in the coordinated management system for at least one of the participating sites.

"(2) Elements of a coordinated management system referred to in paragraph (1) are the following:

"(A) A budget and financial management system for those facilities that -

"(i) provides managers with information about the costs of providing health care by both Departments at the site; and

"(ii) allows managers to assess the advantages and disadvantages (in terms of relative costs, benefits, and opportunities) of using resources of either Department to provide or enhance health care to beneficiaries of either Department.

"(B) A coordinated staffing and assignment system for the personnel (including contract personnel) employed at or assigned to those facilities, including clinical practitioners of either Department.

"(C) Medical information and information technology systems for those facilities that -

"(i) are compatible with the purposes of the project;

"(ii) communicate with medical information and information technology systems of corresponding elements of those facilities; and

"(iii) incorporate minimum standards of information quality that are at least equivalent to those adopted for the Departments at large in their separate health care systems.

"(d) Authority To Waive Certain Administrative Policies. - (1)(A) In order to carry out subsection (c), the Secretary of Defense may, in the Secretary's discretion, waive any administrative policy of

the Department of Defense otherwise applicable to that subsection that specifically conflicts with the purposes of the project, in instances in which the Secretary determines that the waiver is necessary for the purposes of the project.

"(B) In order to carry out subsection (c), the Secretary of Veterans Affairs may, in the Secretary's discretion, waive any administrative policy of the Department of Veterans Affairs otherwise applicable to that subsection that specifically conflicts with the purposes of the project, in instances in which the Secretary determines that the waiver is necessary for the purposes of the project.

"(C) The two Secretaries shall establish procedures for resolving disputes that may arise from the effects of policy changes that are not covered by other agreements or existing procedures.

"(2) No waiver under paragraph (1) may alter any labor-management agreement in effect as of the date of the enactment of this Act [Dec. 2, 2002] or adopted by either Department during the period of the project.

"(e) Use by DOD of Certain Title 38 Personnel Authorities. - (1) In order to carry out subsection (c), the Secretary of Defense may apply to civilian personnel of the Department of Defense assigned to or employed at a military treatment facility participating in the project any of the provisions of subchapters I, III, and IV of chapter 74 of title 38, United States Code, determined appropriate by the Secretary.

"(2) For purposes of paragraph (1), any reference in chapter 74 of title 38, United States Code -

"(A) to the 'Secretary' or the 'Under Secretary for Health' shall be treated as referring to the Secretary of Defense; and

"(B) to the 'Veterans Health Administration' shall be treated as referring to the Department of Defense.

"(f) Funding. - From amounts available for health care for a fiscal year, each Secretary shall make available to carry out the project not less than -

"(1) \$3,000,000 for fiscal year 2003;

"(2) \$6,000,000 for fiscal year 2004; and

"(3) \$9,000,000 for each succeeding year during which the project is in effect.

"(g) Definitions. - For purposes of this section:

"(1) The term 'military treatment facility' means a medical facility under the jurisdiction of the Secretary of a military department.

"(2) The term 'VA health care facility' means a facility under the jurisdiction of the Veterans Health Administration of the Department of Veterans Affairs.

"(h) Termination. - (1) The project, and the authority provided by this section, shall terminate on September 30, 2007.

"(2) The two Secretaries jointly may terminate the performance of the project at any site when the performance of the project at that site fails to meet performance expectations of the Secretaries, as determined by the Secretaries based on information available to the Secretaries to warrant such action."

ACCESS TO CARE FOR TRICARE-ELIGIBLE MILITARY RETIREES

Pub. L. 106-117, title I, Sec. 113, Nov. 30, 1999, 113 Stat. 1556, as amended by Pub. L. 108-7, div. K, title I, Sec. 113(d)(2), Feb. 20, 2003, 117 Stat. 483, provided that:

"(a) Interagency Agreement. - (1) The Secretary of Defense shall enter into an agreement (characterized as a memorandum of understanding or otherwise) with the Secretary of Veterans Affairs with respect to the provision of medical care by the Secretary of

Veterans Affairs to eligible military retirees in accordance with the provisions of subsection (c). That agreement shall include provisions for reimbursement of the Secretary of Veterans Affairs by the Secretary of Defense for medical care provided by the Secretary of Veterans Affairs to an eligible military retiree and may include such other provisions with respect to the terms and conditions of such care as may be agreed upon by the two Secretaries.

"(2) Reimbursement under the agreement under paragraph (1) shall be in accordance with rates agreed upon by the Secretary of Defense and the Secretary of Veterans Affairs. Such reimbursement may be made by the Secretary of Defense or by the appropriate TRICARE Managed Care Support contractor, as determined in accordance with that agreement.

"(3) In entering into the agreement under paragraph (1), particularly with respect to determination of the rates of reimbursement under paragraph (2), the Secretary of Defense shall consult with TRICARE Managed Care Support contractors.

"(4) The Secretary of Veterans Affairs may not enter into an agreement under paragraph (1) for the provision of care in accordance with the provisions of subsection (c) with respect to any geographic service area, or a part of any such area, of the Veterans Health Administration unless -

"(A) in the judgment of that Secretary, the Department of Veterans Affairs will recover the costs of providing such care to eligible military retirees; and

"(B) that Secretary has certified and documented, with respect to any geographic service area in which the Secretary proposes to provide care in accordance with the provisions of subsection (c), that such geographic service area, or designated part of any such area, has adequate capacity (consistent with the requirements in section 1705(b)(1) of title 38, United States Code, that care to enrollees shall be timely and acceptable in quality) to provide such care.

"(5) The agreement under paragraph (1) shall be entered into by the Secretaries not later than nine months after the date of the enactment of this Act [Nov. 30, 1999]. If the Secretaries are unable to reach agreement, they shall jointly report, by that date or within 30 days thereafter, to the Committees on Armed Services and the Committees on Veterans' Affairs of the Senate and House of Representatives on the reasons for their inability to reach an agreement and their mutually agreed plan for removing any impediments to final agreement.

"(b) Depositing of Reimbursements. - Amounts received by the Secretary of Veterans Affairs under the agreement under subsection (a) shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of title 38, United States Code.

"(c) Copayment Requirement. - The provisions of subsections (f)(1) and (g)(1) of section 1710 of title 38, United States Code, shall not apply in the case of an eligible military retiree who is covered by the agreement under subsection (a).

"(d) Phased Implementation. - (1) The Secretary of Defense shall include in each TRICARE contract entered into after the date of the enactment of this Act [Nov. 30, 1999] provisions to implement the agreement under subsection (a).

"(2) The provisions of the agreement under subsection (a)(2) and the provisions of subsection (c) shall apply to the furnishing of medical care by the Secretary of Veterans Affairs in any area of the United States only if that area is covered by a TRICARE contract that was entered into after the date of the enactment of

this Act.

"(e) Eligible Military Retirees. - For purposes of this section, an eligible military retiree is a member of the Army, Navy, Air Force, or Marine Corps who -

"(1) has retired from active military, naval, or air service;

"(2) is eligible for care under the TRICARE program established by the Secretary of Defense;

"(3) has enrolled for care under section 1705 of title 38, United States Code; and

"(4) is not described in paragraph (1) or (2) of section 1710(a) of such title."

HEALTH-CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE

Pub. L. 106-398, Sec. 1 [[div. A], title VII, Sec. 741], Oct. 30, 2000, 114 Stat. 1654, 1654A-192, provided that:

"(a) Primacy of Sharing Agreements. - The Secretary of Defense shall -

"(1) give full force and effect to any agreement into which the Secretary or the Secretary of a military department entered under section 8111 of title 38, United States Code, or under section 1535 of title 31, United States Code, which was in effect on September 30, 1999; and

"(2) ensure that the Secretary of the military department concerned directly reimburses the Secretary of Veterans Affairs for any services or resources provided under such agreement in accordance with the terms of such agreement, including terms providing for reimbursement from funds available for that military department.

"(b) Modification or Termination. - Any agreement described in subsection (a) shall remain in effect in accordance with such subsection unless, during the 12-month period following the date of the enactment of this Act [Oct. 30, 2000], such agreement is modified or terminated in accordance with the terms of such agreement."

Pub. L. 104-262, title III, Sec. 302(b)(2), Oct. 9, 1996, 110 Stat. 3193, provided that: "Any services provided pursuant to agreements entered into under section 201 of such Act [Pub. L. 102-585] (38 U.S.C. 8111 note) during the period beginning on October 1, 1996, and ending on the date of the enactment of this Act [Oct. 9, 1996] are hereby ratified."

Pub. L. 102-585, title II, Nov. 4, 1992, 106 Stat. 4949, as amended by Pub. L. 103-446, title XII, Sec. 1202(e)(1), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 104-262, title III, Sec. 302(a), (b)(1), (c), Oct. 9, 1996, 110 Stat. 3193, provided that:

"SEC. 201. TEMPORARY EXPANSION OF AUTHORITY FOR SHARING AGREEMENTS.

"(a) Authority. - The Secretary of Veterans Affairs may enter into an agreement with the Secretary of Defense under this section to expand the availability of health-care sharing arrangements with the Department of Defense under section 8111(c) of title 38, United States Code. Under such an agreement -

"(1) the head of a Department of Veterans Affairs medical facility may enter into agreements under section 8111(d) of that title with (A) the head of a Department of Defense medical facility, (B) with any other official of the Department of Defense responsible for the provision of care under chapter 55 of title 10, United States Code, to persons who are covered beneficiaries under that chapter, in the region of the Department of Veterans Affairs medical facility, or (C) with a contractor of

the Department of Defense responsible for the provision of care under chapter 55 of title 10, United States Code, to persons who are covered beneficiaries under that chapter, in the region of the Department of Veterans Affairs medical facility; and

"(2) the term 'primary beneficiary' shall be treated as including -

"(A) with respect to the Department of Veterans Affairs, any person who is described in section 1713 [now 1781] of title 38, United States Code; and

"(B) with respect to the Department of Defense, any person who is a covered beneficiary under chapter 55 of title 10, United States Code.

"(b) Use of Funds. - Any amount received by the Secretary from a non-Federal entity as payment for services provided by the Secretary during a prior fiscal year under an agreement entered into under this section may be obligated by the Secretary during the fiscal year in which the Secretary receives the payment.

"SEC. 202. REQUIREMENT FOR IMPROVEMENT IN SERVICES FOR VETERANS.

"A proposed agreement authorized by section 201 that is entered into by the head of a Department of Veterans Affairs medical facility may take effect only if the Under Secretary for Health of the Department of Veterans Affairs finds, and certifies to the Secretary of Veterans Affairs, that implementation of the agreement

-
"(1) will result in the improvement of services to eligible veterans at that facility; and

"(2) will not result in the denial of, or a delay in providing, access to care for any veteran at that facility.

"SEC. 203. EXPANDED SHARING AGREEMENTS WITH DEPARTMENT OF DEFENSE.

"Under an agreement under section 201, guidelines under section 8111(b) of title 38, United States Code, may be modified to provide that, notwithstanding any other provision of law, any person who is a covered beneficiary under chapter 55 of title 10 and who is furnished care or services by a facility of the Department of Veterans Affairs under an agreement entered into under section 8111 of that title, or who is described in section 1713 [now 1781] of title 38, United States Code, and who is furnished care or services by a facility of the Department of Defense, may be authorized to receive such care or services -

"(1) without regard to any otherwise applicable requirement for the payment of a copayment or deductible; or

"(2) subject to a requirement to pay only part of any such otherwise applicable copayment or deductible, as specified in the guidelines.

"[SEC. 204. Repealed. Pub. L. 104-262, title III, Sec. 302(b)(1), Oct. 9, 1996, 110 Stat. 3193.]

"SEC. 205. CONSULTATION WITH VETERANS SERVICE ORGANIZATIONS.

"In carrying out this title, the Secretary of Veterans Affairs shall consult with organizations named in or approved under section 5902 of title 38, United States Code.

"SEC. 206. ANNUAL REPORT.

"(a) In General. - For each of fiscal years 1993 through 1996, the Secretary of Defense and the Secretary of Veterans Affairs shall include in the annual report of the Secretaries under section 8111(f) of title 38, United States Code, a description of the

Secretaries' implementation of this section.

"(b) Additional Matters for Fiscal Year 1996 Report. - In the report under subsection (a) for fiscal year 1996, the Secretaries shall include the following:

"(1) An assessment of the effect of agreements entered into under section 201 on the delivery of health care to eligible veterans.

"(2) An assessment of the cost savings, if any, associated with provision of services under such agreements to retired members of the Armed Forces, dependents of members or former members of a uniformed service, and beneficiaries under section 1713 [now 1781] of title 38, United States Code.

"(3) Any plans for administrative action, and any recommendations for legislation, that the Secretaries consider appropriate to include in the report.

"SEC. 207. AUTHORITY TO BILL HEALTH-PLAN CONTRACTS.

"(a) Right To Recover. - In the case of a primary beneficiary (as described in section 201(a)(2)(B)) who has coverage under a health-plan contract, as defined in section 1729(i)(1)(A) of title 38, United States Code, and who is furnished care or services by a Department medical facility pursuant to this title, the United States shall have the right to recover or collect charges for such care or services from such health-plan contract to the extent that the beneficiary (or the provider of the care or services) would be eligible to receive payment for such care or services from such health-plan contract if the care or services had not been furnished by a department or agency of the United States. Any funds received from such health-plan contract shall be credited to funds that have been allotted to the facility that furnished the care or services.

"(b) Enforcement. - The right of the United States to recover under such a beneficiary's health-plan contract shall be enforceable in the same manner as that provided by subsections (a)(3), (b), (c)(1), (d), (f), (h), and (i) of section 1729 of title 38, United States Code."

CONGRESSIONAL FINDINGS

Section 2(a) of Pub. L. 97-174 provided that: "The Congress makes the following findings:

"(1) There are opportunities for greater sharing of the health-care resources of the Veterans' Administration and the Department of Defense which would, if achieved, be beneficial to both veterans and members of the Armed Forces and could result in reduced costs to the Government by minimizing duplication and underuse of health-care resources.

"(2) Present incentives to encourage such sharing of health-care resources are inadequate.

"(3) Such sharing of health-care resources can be achieved without a detrimental effect on the primary health-care beneficiaries of the Veterans' Administration and the Department of Defense."

-EXEC-

EXECUTIVE ORDER NO. 13214

Ex. Ord. No. 13214, May 28, 2001, 66 F.R. 29447, which established President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, was revoked by Ex. Ord. No. 13316, Sec. 3(h), Sept. 17, 2003, 68 F.R. 55256, eff. Sept. 30, 2003.

-End-

-CITE-

38 USC Sec. 8111A

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8111A. Furnishing of health-care services to members of the
Armed Forces during a war or national emergency

-STATUTE-

(a)(1) During and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces in armed conflict, the Secretary may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty.

(2)(A) During and immediately following a disaster or emergency referred to in subparagraph (B), the Secretary may furnish hospital care and medical services to members of the Armed Forces on active duty responding to or involved in that disaster or emergency.

(B) A disaster or emergency referred to in this subparagraph is any disaster or emergency as follows:

(i) A major disaster or emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(ii) A disaster or emergency in which the National Disaster Medical System established pursuant to section 2812 of the Public Health Service Act (42 U.S.C. 300hh) (!1) is activated by the Secretary of Health and Human Services under that section or as otherwise authorized by law.

(3) The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of veterans with service-connected disabilities.

(4) For the purposes of this section, the terms "hospital care", "nursing home care", and "medical services" have the meanings given such terms by sections 1701(5), 101(28), and 1701(6) of this title, respectively, and the term "medical services" includes services under sections 1782 and 1783 of this title.

(b)(1) During a period in which the Secretary is authorized to furnish care and services to members of the Armed Forces under subsection (a) of this section, the Secretary, to the extent authorized by the President and subject to the availability of appropriations or reimbursements under subsection (c) of this section, may enter into contracts with private facilities for the provision during such period by such facilities of hospital care and medical services described in paragraph (2) of this subsection.

(2) Hospital care and medical services referred to in paragraph (1) of this subsection are -

(A) hospital care and medical services authorized under this title for a veteran and necessary for the care or treatment of a condition for which the veteran is receiving medical services at a Department facility under subsection (a) of section 1710 of this title, in a case in which the delay involved in furnishing such care or services at such Department facility or at any other Department facility reasonably accessible to the veteran would, in the judgment of the Under Secretary for Health, be likely to result in a deterioration of such condition; and

(B) hospital care for a veteran who -

(i) is receiving hospital care under section 1710 of this title; or

(ii) is eligible for hospital care under such section and requires such care in a medical emergency that poses a serious threat to the life or health of the veteran;

if Department facilities are not capable of furnishing or continuing to furnish the care required because of the furnishing of care and services to members of the Armed Forces under subsection (a) of this section.

(c)(1) The cost of any care or services provided by the Department under subsection (a) of this section shall be reimbursed to the Department by the Department of Defense at such rates as may be agreed upon by the Secretary and the Secretary of Defense based on the cost of the care or services provided.

(2) Amounts received under this subsection shall be credited to funds allotted to the Department facility that provided the care or services.

(d)(1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly review plans for the implementation of this section not less often than annually.

(2) Whenever a modification to such plans is agreed to, the Secretaries shall jointly submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on such modification. Any such report shall be submitted within 30 days after the modification is agreed to.

(e) The Secretary shall prescribe regulations to govern any exercise of the authority of the Secretary under subsections (a) and (b) of this section and of the Under Secretary for Health under subsection (b)(2)(A) of this section.

-SOURCE-

(Added Pub. L. 97-174, Sec. 4(a), May 4, 1982, 96 Stat. 74, Sec. 5011A; renumbered Sec. 8111A, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, Sec. 14(f)(4), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, Secs. 4(a)(3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104-262, title I, Sec. 101(e)(5), Oct. 9, 1996, 110 Stat. 3181; Pub. L. 106-419, title IV, Sec. 403(b), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 107-135, title II, Sec. 208(e)(7), Jan. 23, 2002, 115 Stat. 2464; Pub. L. 107-287, Sec. 4(b), Nov. 7, 2002, 116 Stat. 2029; Pub. L. 109-444, Sec. 8(a)(8), Dec. 21, 2006, 120 Stat. 3313; Pub. L. 109-461, title X, Secs. 1004(a)(8), 1006(b), Dec. 22, 2006, 120 Stat. 3466, 3468; Pub. L. 111-275, title X, Sec. 1001(p)(1), Oct. 13, 2010, 124 Stat. 2897.)

-REFTEXT-

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance

Act, referred to in subsec. (a)(2)(B)(i), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (Sec. 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

Section 2812 of the Public Health Service Act, referred to in subsec. (a)(2)(B)(ii), is classified to section 300hh-11 of Title 42, The Public Health and Welfare.

-MISC1-

AMENDMENTS

2010 - Subsec. (a)(2)(B)(ii). Pub. L. 111-275 substituted "section 2812 of the Public Health Service Act (42 U.S.C. 300hh)" for "section 2811(b) of the Public Health Service Act (42 U.S.C. 300hh-11(b))" and struck out "paragraph (3)(A) of" before "that section".

2006 - Subsec. (a)(2)(B)(i). Pub. L. 109-461, Sec. 1006(b), provided that as of the enactment of Pub. L. 109-461, the amendments made by Pub. L. 109-444 were deemed for all purposes not to have taken effect and that Pub. L. 109-444 ceased to be in effect. See Amendment notes below and section 1006(b) of Pub. L. 109-461, set out as a Coordination of Provisions With Pub. L. 109-444 note under section 101 of this title.

Pub. L. 109-461, Sec. 1004(a)(8), substituted "Robert T." for "Robert B."

Pub. L. 109-444, which substituted "Robert T." for "Robert B.", was terminated by Pub. L. 109-461, Sec. 1006(b). See Amendment notes above.

2002 - Subsec. (a). Pub. L. 107-287 redesignated second sentence of par. (1) as par. (3), added par. (2), and redesignated former par. (2) as (4).

Subsec. (a)(2). Pub. L. 107-135 inserted ", and the term 'medical services' includes services under sections 1782 and 1783 of this title" before period at end.

2000 - Subsec. (f). Pub. L. 106-419 struck out subsec. (f) which read as follows: "Within thirty days after a declaration of a period of war or national emergency described in subsection (a) of this section (or as soon after the end of such thirty-day period as is reasonably practicable), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's allocation of facilities and personnel in order to provide priority hospital care, nursing home care, and medical services under this section to members of the Armed Forces. Thereafter, with respect to any fiscal year in which the authority in subsection (b) of this section to enter into contracts with private facilities has been used, the Secretary shall report within ninety days after the end of such fiscal year to those committees regarding the extent of, and the circumstances under which, such authority was used."

1996 - Subsec. (b)(2)(A). Pub. L. 104-262 substituted "subsection (a) of section 1710" for "subsection (f) of section 1712".

1992 - Subsecs. (b)(2)(A), (e). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991 - Pub. L. 102-40 renumbered section 5011A of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 5(c)(1), substituted "1701(5)" for "601(5)" and "1701(6)" for "601(6)" in par. (2).

Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in par. (1).

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in par. (1).

Subsec. (b). Pub. L. 102-83, Sec. 5(c)(1), substituted "1712" for "612" in par. (2)(A) and "1710" for "610" in par. (2)(B)(i).

Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in par. (1).

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing in par. (2).

Pub. L. 102-54, Sec. 14(f)(4)(A), amended subsec. (b)(2)(A) as in effect immediately before the enactment of Pub. L. 102-40 by striking out "or (g)" after "subsection (f)".

Subsec. (c). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in par. (1).

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsec. (d). Pub. L. 102-54, Sec. 14(f)(4)(B), amended section as in effect immediately before the enactment of Pub. L. 102-40 by adding subsec. (d) and striking out former subsec. (d) which read as follows:

"(1) Not later than six months after the date of the enactment of this section, the Administrator and the Secretary of Defense shall enter into an agreement to plan and establish procedures and guidelines for the implementation of this section. Not later than one year after the date of the enactment of this section, the Administrator and the Secretary shall complete plans for such implementation and shall submit such plans to the Committees on Veterans' Affairs and on Armed Services of the Senate and House of Representatives.

"(2) The Administrator and the Secretary of Defense shall jointly review such plans not less often than annually thereafter and shall report to such committees any modification in such plans within thirty days after the modification is agreed to."

Subsecs. (e), (f). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's" wherever appearing.

-TRANS-

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System, including the functions of the Secretary of Homeland Security and the Under Secretary for Emergency Preparedness and Response relating thereto, to the Secretary of Health and Human Services, see title III of Pub. L. 109-295, set out in part as a note under section 300hh-11 of Title 42, The Public Health and Welfare, and section 301(b) of Pub. L. 109-417, set out as a note under section 300hh-11 of Title 42.

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness [now Assistant Secretary for Preparedness and Response] relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(5) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

-MISC2-

CONGRESSIONAL FINDINGS

Section 2(b) of Pub. L. 97-174 provided that: "The Congress makes the following further findings:

"(1) During and immediately after a period of war or national emergency involving the use of the Armed Forces of the United States in armed conflict, the Department of Defense might not have adequate health-care resources to care for military personnel wounded in combat and other active-duty military personnel.

"(2) The Veterans' Administration has an extensive, comprehensive health-care system that could be used to assist the Department of Defense in caring for such personnel in such a situation."

-EXEC-

EXECUTIVE ORDER NO. 12751

Ex. Ord. No. 12751, Feb. 14, 1991, 56 F.R. 6787, which related to health care services for Operation Desert Storm, was revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055, listed in a table under section 1701 of Title 50, War and National Defense.

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

38 USC Sec. 8112 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8112. Partial relinquishment of legislative jurisdiction

-STATUTE-

The Secretary, on behalf of the United States, may relinquish to the State in which any lands or interests therein under the supervision or control of the Secretary are situated, such measure of legislative jurisdiction over such lands or interests as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of legislative jurisdiction shall be initiated by filing a notice thereof with the Governor of the State concerned, or in such other manner as may be prescribed by the laws of such State, and shall take effect upon acceptance by such State.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 60, Sec. 5012; renumbered Sec. 8112, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5007 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5012 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" in two places.

-End-

-CITE-

38 USC Sec. 8113

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8113. Property formerly owned by National Home for Disabled Volunteer Soldiers

-STATUTE-

If by reason of any defeasance or conditional clause or clauses contained in any deed of conveyance of property to the National Home for Disabled Volunteer Soldiers, which property is owned by the United States, the full and complete enjoyment and use of such property is threatened, the Attorney General, upon request of the President, shall institute in the United States district court for the district in which the property is located such proceedings as may be proper to extinguish all outstanding adverse interests. The Attorney General may procure and accept, on behalf of the United States, by gift, purchase, cession, or otherwise, absolute title to, and complete jurisdiction over, all such property.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 61, Sec. 5013; renumbered Sec. 8113, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5006 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5013 of this title as this section.

-End-

-CITE-

38 USC Sec. 8114

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8114. Use of federally owned facilities; use of personnel

-STATUTE-

(a) The Secretary, subject to the approval of the President, may use as medical facilities such suitable buildings, structures, and grounds owned by the United States on March 3, 1925, as may be available for such purposes, and the President may by Executive order transfer any such buildings, structures, and grounds to the control and jurisdiction of the Department upon the request of the Secretary.

(b) The President may require the architectural, engineering, constructing, or other forces of any of the departments of the Government to do or assist in the construction and alteration of medical facilities, and the President may employ for such purposes individuals and agencies not connected with the Government, if in the opinion of the President such is desirable, at such compensation as the President may consider reasonable.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 61, Sec. 5014; renumbered Sec. 8114, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 5001(e) of this title prior to the general revision of this subchapter by Pub. L. 96-22.

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5014 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

-End-

-CITE-

38 USC Sec. 8115

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8115. Acceptance of certain property

-STATUTE-

The President may accept from any State or other political subdivision, or from any person, any building, structure, equipment, or grounds suitable for the care of disabled persons, with due regard to fire or other hazards, state of repair, and all other pertinent considerations. The President may designate which agency of the Federal Government shall have the control and management of any property so accepted.

-SOURCE-

(Added Pub. L. 96-22, title III, Sec. 301(a), June 13, 1979, 93 Stat. 61, Sec. 5015; renumbered Sec. 8115, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5005 of this title prior to the general revision of this subchapter by Pub. L. 96-22.

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5015 of this title as this section.

-End-

-CITE-

38 USC Sec. 8116

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8116. Nursing home revolving fund

-STATUTE-

(a)(1) Amounts realized from a transfer pursuant to section 8122(a)(2)(C) (!1) of this title shall be administered as a revolving fund and shall be available without fiscal year

limitation.

(2) The revolving fund shall be deposited in a checking account with the Treasurer of the United States.

(b)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, and acquisition (including site acquisition) of nursing home facilities and may be made only as provided for in appropriation Acts.

(2) For the purpose of section 8104(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund may be expended for a project involving a total expenditure of more than \$2,000,000 for the construction, alteration, or acquisition (including site acquisition) of a nursing home facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.

-SOURCE-

(Added Pub. L. 100-322, title II, Sec. 205(a), May 20, 1988, 102 Stat. 512, Sec. 5016; renumbered Sec. 8116 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

-STATAMEND-

REPEAL OF SECTION

Pub. L. 108-422, title IV, Sec. 411(c)(1),(f), Nov. 30, 2004, 118 Stat. 2389, 2390, provided that this section is repealed effective at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with section 1710B(b) of this title.

-REFTEXT-

REFERENCES IN TEXT

Section 8122(a)(2) of this title, referred to in subsec. (a)(1), was amended generally by Pub. L. 108-422, title IV, Sec. 411(e)(1), Nov. 30, 2004, 118 Stat. 2389, and, as so amended, no longer contains a subpar. (C).

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5016 of this title as this section.

Pub. L. 102-40, Sec. 402(d)(1), substituted "8122(a)(2)(C)" for "5022(a)(2)(C)" in subsec. (a)(1) and "8104(a)(2)" for "5004(a)(2)" in subsec. (b)(2).

EFFECTIVE DATE OF REPEAL

Repeal effective at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with section 1710B(b) of this title, see section 411(f) of Pub. L. 108-422, set out as an Effective Date of 2004 Amendment note under section 1710B of this title.

TRANSFER OF NURSING HOME REVOLVING FUND BALANCES AND RECEIPTS

For provisions relating to the transfer of balances and receipts from the Nursing Home Revolving Fund to the "Medical services" account, see section 115 of Pub. L. 108-447, set out as a note under section 1729a of this title.

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

38 USC Sec. 8117

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8117. Emergency preparedness

-STATUTE-

(a) Readiness of Department Medical Centers. - (1) The Secretary shall take appropriate actions to provide for the readiness of Department medical centers to protect the patients and staff of such centers from a public health emergency (as defined in section 2801 of the Public Health Service Act) or otherwise to respond to such an emergency so as to enable such centers to fulfill their obligations as part of the Federal response to such emergencies.

(2) Actions under paragraph (1) shall include -

(A) the provision of decontamination equipment and personal protection equipment at Department medical centers;

(B) the provision of training in the use of such equipment to staff of such centers;

(C) organizing, training, and equipping the staff of such centers to support the activities carried out by the Secretary of Health and Human Services under section 2801 of the Public Health Service Act in the event of a public health emergency and incidents covered by the National Response Plan developed pursuant to section 502(6) (!1) of the Homeland Security Act of 2002, or any successor plan; and

(D) providing medical logistical support to the National Disaster Medical System and the Secretary of Health and Human Services as necessary, on a reimbursable basis, and in coordination with other designated Federal agencies.

(b) Security at Department Medical and Research Facilities. - (1) The Secretary shall take appropriate actions to provide for the security of Department medical centers and research facilities, including staff and patients at such centers and facilities.

(2) In taking actions under paragraph (1), the Secretary shall take into account the results of the evaluation of the security needs at Department medical centers and research facilities required by section 154(b)(1) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188; 116 Stat. 631), including the results of such evaluation relating to the following needs:

(A) Needs for the protection of patients and medical staff

during emergencies, including a chemical or biological attack or other terrorist attack.

(B) Needs, if any, for screening personnel engaged in research relating to biological pathogens or agents, including work associated with such research.

(C) Needs for securing laboratories or other facilities engaged in research relating to biological pathogens or agents.

(c) Tracking of Pharmaceuticals and Medical Supplies and Equipment. - The Secretary shall develop and maintain a centralized system for tracking the current location and availability of pharmaceuticals, medical supplies, and medical equipment throughout the Department health care system in order to permit the ready identification and utilization of such pharmaceuticals, supplies, and equipment for a variety of purposes, including response to a public health emergency. The Secretary shall, through existing medical procurement contracts, and on a reimbursable basis, make available as necessary, medical supplies, equipment, and pharmaceuticals in response to a public health emergency in support of the Secretary of Health and Human Services.

(d) Training. - The Secretary shall ensure that the Department medical centers, in consultation with the accredited medical school affiliates of such medical centers, implement curricula to train resident physicians and health care personnel in medical matters relating to public health emergencies or attacks from an incendiary or other explosive weapon consistent with section 319F(a) of the Public Health Service Act.

(e) Participation in National Disaster Medical System. - (1) The Secretary shall establish and maintain a training program to facilitate the participation of the staff of Department medical centers, and of the community partners of such centers, in the National Disaster Medical System established pursuant to section 2812 of the Public Health Service Act (42 U.S.C. 300hh-11).

(2) The Secretary shall establish and maintain the training program under paragraph (1) in accordance with the recommendations of the working group on the prevention, preparedness, and response to public health emergencies established under section 319F of the Public Health Service Act (42 U.S.C. 247d-6).

(3) The Secretary shall establish and maintain the training program under paragraph (1) in consultation with the following:

(A) The Secretary of Defense.

(B) The Secretary of Health and Human Services.

(C) The Administrator of the Federal Emergency Management Agency.

(f) Mental Health Counseling. - (1) With respect to activities conducted by personnel serving at Department medical centers, the Secretary shall develop and maintain various strategies for providing mental health counseling and assistance, including counseling and assistance for post-traumatic stress disorder, following a bioterrorist attack or other public health emergency to the following persons:

(A) Veterans.

(B) Local and community emergency response providers.

(C) Active duty military personnel.

(D) Individuals seeking care at Department medical centers.

(2) The strategies under paragraph (1) shall include the following:

(A) Training and certification of providers of mental health counseling and assistance.

(B) Mechanisms for coordinating the provision of mental health counseling and assistance to emergency response providers referred to in paragraph (1).

(3) The Secretary shall develop and maintain the strategies under paragraph (1) in consultation with the Secretary of Health and Human Services, the American Red Cross, and the working group referred to in subsection (e)(2).

(g) Authorization of Appropriations. - There are authorized to be appropriated, such sums as may be necessary to carry out this section for each of fiscal years 2007 through 2011.

-SOURCE-

(Added Pub. L. 107-287, Sec. 6(a)(1), Nov. 7, 2002, 116 Stat. 2030; amended Pub. L. 109-295, title VI, Sec. 612(c), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 109-417, title III, Sec. 306, Dec. 19, 2006, 120 Stat. 2863; Pub. L. 110-387, title IX, Sec. 901(a)(7), Oct. 10, 2008, 122 Stat. 4142; Pub. L. 111-275, title X, Sec. 1001(p)(2), Oct. 13, 2010, 124 Stat. 2897.)

-REFTEXT-

REFERENCES IN TEXT

Section 2801 of the Public Health Service Act, referred to in subsec. (a)(1), is classified to section 300hh of Title 42, The Public Health and Welfare.

Section 502 of the Homeland Security Act of 2002, referred to in subsec. (a)(2)(C), probably means section 502 of Pub. L. 107-296 prior to its redesignation as section 504 by Pub. L. 109-295, Sec. 611(8), and reclassification as section 314 of Title 6, Domestic Security, and not section 506 of Pub. L. 107-296 which was redesignated section 502 by Pub. L. 109-295, Sec. 611(9), and is classified to section 312 of Title 6. Provisions relating to the National Response Plan are contained in section 314(a)(6) of Title 6.

Section 154(b)(1) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, referred to in subsec. (b)(2), is section 154(b)(1) of Pub. L. 107-188, which is set out as a note below.

-MISC1-

AMENDMENTS

2010 - Subsec. (e)(1). Pub. L. 111-275, Sec. 1001(p)(2)(A), substituted "(42 U.S.C. 300hh-11)" for "(42 U.S.C. 300hh-11(b))".

Subsec. (e)(2). Pub. L. 111-275, Sec. 1001(p)(2)(B), substituted "(42 U.S.C. 247d-6)" for "(42 U.S.C. 247d-6(a))".

2008 - Subsec. (a)(1). Pub. L. 110-387 substituted "respond to such" for "respond to such such".

2006 - Subsec. (a)(1). Pub. L. 109-417, Sec. 306(a)(1)(A), substituted "a public health emergency (as defined in section 2801 of the Public Health Service Act)" for "chemical or biological attack", "such an emergency" for "an attack", and "such emergencies" for "public health emergencies".

Subsec. (a)(2)(C), (D). Pub. L. 109-417, Sec. 306(a)(1)(B), added subpars. (C) and (D).

Subsec. (c). Pub. L. 109-417, Sec. 306(a)(2), substituted "a public health emergency. The Secretary shall, through existing medical procurement contracts, and on a reimbursable basis, make available as necessary, medical supplies, equipment, and pharmaceuticals in response to a public health emergency in support of the Secretary of Health and Human Services." for "a chemical or

biological attack or other terrorist attack."

Subsec. (d). Pub. L. 109-417, Sec. 306(a)(3), struck out "develop and" before "implement curricula", substituted "public health emergencies" for "biological, chemical, or radiological attacks", and inserted "consistent with section 319F(a) of the Public Health Service Act" before period at end.

Subsec. (e)(1). Pub. L. 109-417, Sec. 306(a)(4)(A), substituted "2812" for "2811(b)".

Subsec. (e)(2). Pub. L. 109-417, Sec. 306(a)(4)(B), struck out "bioterrorism and other" after "response to" and substituted "319F" for "319F(a)".

Subsec. (g). Pub. L. 109-417, Sec. 306(b), added subsec. (g).

-CHANGE-

CHANGE OF NAME

"Administrator of the Federal Emergency Management Agency" substituted for "Director of the Federal Emergency Management Agency" in subsec. (e)(3)(C) on authority of section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109-295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109-295, set out as a note under section 313 of Title 6.

-TRANS-

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System, including the functions of the Secretary of Homeland Security and the Under Secretary for Emergency Preparedness and Response relating thereto, to the Secretary of Health and Human Services, see title III of Pub. L. 109-295, set out in part as a note under section 300hh-11 of Title 42, The Public Health and Welfare, and section 301(b) of Pub. L. 109-417, set out as a note under section 300hh-11 of Title 42.

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness [now Assistant Secretary for Preparedness and Response] relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(5) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

-MISC2-

ENHANCEMENT OF EMERGENCY PREPAREDNESS OF DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 107-188, title I, Sec. 154, June 12, 2002, 116 Stat. 631, as amended by Pub. L. 107-287, Sec. 6(b), (c), Nov. 7, 2002, 116 Stat. 2032, provided that:

"[(a) Repealed. Pub. L. 107-287, Sec. 6(b), Nov. 7, 2002, 116 Stat. 2032.]

"(b) Security at Department Medical and Research Facilities. -
(1) Not later than 180 days after the date of the enactment of this Act [June 12, 2002], the Secretary [of Veterans Affairs] shall

carry out an evaluation of the security needs at Department medical centers and research facilities. The evaluation shall address the following needs:

"(A) Needs for the protection of patients and medical staff during emergencies, including a chemical or biological attack or other terrorist attack.

"(B) Needs, if any, for screening personnel engaged in research relating to biological pathogens or agents, including work associated with such research.

"(C) Needs for securing laboratories or other facilities engaged in research relating to biological pathogens or agents.

"(D) Any other needs the Secretary considers appropriate.

"[(2) Repealed. Pub. L. 107-287, Sec. 6(b), Nov. 7, 2002, 116 Stat. 2032.]

"[(c) to (f) Repealed. Pub. L. 107-287, Sec. 6(b), Nov. 7, 2002, 116 Stat. 2032.]

"(g) Authorization of Appropriations. - There is hereby authorized to be appropriated for the Department of Veterans Affairs amounts as follows:

"(1) To carry out activities required by subsection (a) of section 8117 of title 38, United States Code -

"(A) \$100,000,000 for fiscal year 2002; and

"(B) such sums as may be necessary for each of fiscal years 2003 through 2006.

"(2) To carry out activities required by subsection (b)(1) of this section and subsections (b) through (f) of section 8117 of title 38, United States Code -

"(A) \$33,000,000 for fiscal year 2002; and

"(B) such sums as may be necessary for each of fiscal years 2003 through 2006."

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

38 USC Sec. 8118

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8118. Authority for transfer of real property; Department of Veterans Affairs Capital Asset Fund

-STATUTE-

(a)(1) The Secretary may transfer real property under the jurisdiction or control of the Secretary (including structures and equipment associated therewith) to another department or agency of the United States, to a State (or a political subdivision of a State), or to any public or private entity, including an Indian tribe. Such a transfer may be made only if the Secretary receives

compensation of not less than the fair market value of the property, except that no compensation is required, or compensation at less than fair market value may be accepted, in the case of a transfer to a grant and per diem provider (as defined in section 2002 of this title). When a transfer is made to a grant and per diem provider for less than fair market value, the Secretary shall require in the terms of the conveyance that if the property transferred is used for any purpose other than a purpose under chapter 20 of this title, all right, title, and interest to the property shall revert to the United States.

(2) The Secretary may exercise the authority provided by this section notwithstanding sections 521, 522, and 541 through 545 of title 40. Any such transfer shall be in accordance with this section and section 8122 of this title.

(3) The authority provided by this section may not be used in a case to which section 8164 of this title applies.

(4) The Secretary may enter into partnerships or agreements with public or private entities dedicated to historic preservation to facilitate the transfer, leasing, or adaptive use of structures or properties specified in subsection (b)(3)(D).

(5) The authority of the Secretary under paragraph (1) expires on December 31, 2018.

(b)(1) There is established in the Treasury of the United States a revolving fund to be known as the Department of Veterans Affairs Capital Asset Fund (hereinafter in this section referred to as the "Fund"). Amounts in the Fund shall remain available until expended.

(2) Proceeds from the transfer of real property under this section shall be deposited into the Fund.

(3) To the extent provided in advance in appropriations Acts, amounts in the Fund may be expended for the following purposes:

(A) Costs associated with the transfer of real property under this section, including costs of demolition, environmental remediation, maintenance and repair, improvements to facilitate the transfer, and administrative expenses.

(B) Costs, including costs specified in subparagraph (A), associated with future transfers of property under this section.

(C) Costs associated with enhancing medical care services to veterans by improving, renovating, replacing, updating, or establishing patient care facilities through construction projects to be carried out for an amount less than the amount specified in 8104(a)(3)(A) for a major medical facility project.

(D) Costs, including costs specified in subparagraph (A), associated with the transfer, lease, or adaptive use of a structure or other property under the jurisdiction of the Secretary that is listed on the National Register of Historic Places.

(c) The Secretary shall include in the budget justification materials submitted to Congress for any fiscal year in support of the President's budget for that fiscal year for the Department specification of the following:

(1) The real property transfers to be undertaken in accordance with this section during that fiscal year.

(2) All transfers completed under this section during the preceding fiscal year and completed and scheduled to be completed during the fiscal year during which the budget is submitted.

(3) The deposits into, and expenditures from, the Fund that are incurred or projected for each of the preceding fiscal year, the current fiscal year, and the fiscal year covered by the budget.

(Added Pub. L. 108-422, title IV, Sec. 411(a)(1), Nov. 30, 2004, 118 Stat. 2388; amended Pub. L. 112-37, Sec. 10(g), Oct. 5, 2011, 125 Stat. 397.)

-MISC1-

AMENDMENTS

2011 - Subsec. (a)(5). Pub. L. 112-37 substituted "December 31, 2018" for "the date that is seven years after the date of the enactment of this section".

TRANSFER OF UNOBLIGATED BALANCES TO CAPITAL ASSET FUND

Pub. L. 108-422, title IV, Sec. 411(d), Nov. 30, 2004, 118 Stat. 2389, provided that: "Any unobligated balances in the nursing home revolving fund under section 8116 of title 38, United States Code, as of the date of the enactment of this Act [Nov. 30, 2004] shall be deposited in the Department of Veterans Affairs Capital Asset Fund established under section 8118 of title 38, United States Code (as added by subsection (a))."

[Section 411(d) of Pub. L. 108-422, set out above, is effective at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with section 1710B(b) of this title, see section 411(f) of Pub. L. 108-422, set out as an Effective Date of 2004 Amendment note under section 1710B of this title.]

-End-

-CITE-

38 USC Sec. 8119

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY
SUBCHAPTER I - ACQUISITION AND OPERATION OF MEDICAL FACILITIES

-HEAD-

Sec. 8119. Annual report on outpatient clinics

-STATUTE-

(a) Annual Report Required. - The Secretary shall submit to the committees an annual report on community-based outpatient clinics and other outpatient clinics of the Department. The report shall be submitted each year not later than the date on which the budget for the next fiscal year is submitted to the Congress under section 1105 of title 31.

(b) Contents of Report. - Each report required under subsection (a) shall include the following:

(1) A list of each community-based outpatient clinic and other outpatient clinic of the Department, and for each such clinic, the type of clinic, location, size, number of health professionals employed by the clinic, workload, whether the clinic is leased or constructed and operated by the Secretary, and the annual cost of operating the clinic.

(2) A list of community-based outpatient clinics and other outpatient clinics that the Secretary opened during the fiscal

year preceding the fiscal year during which the report is submitted and a list of clinics the Secretary proposes opening during the fiscal year during which the report is submitted and the subsequent fiscal year, together with the cost of activating each such clinic and the information required to be provided under paragraph (1) for each such clinic and proposed clinic.

(3) A list of proposed community-based outpatient clinics and other outpatient clinics that are, as of the date of the submission of the report, under review by the National Review Panel and a list of possible locations for future clinics identified in the Department's strategic planning process, including any identified locations in rural and underserved areas.

(4) A prioritized list of sites of care identified by the Secretary that the Secretary could establish without carrying out construction or entering into a lease, including -

(A) any such sites that could be expanded by hiring additional staff or allocating staff to Federal facilities or facilities operating in collaboration with the Federal Government; and

(B) any sites established, or able to be established, under sections 8111 and 8153 of this title.

-SOURCE-

(Added Pub. L. 110-387, title VII, Sec. 708(a), Oct. 10, 2008, 122 Stat. 4139.)

-MISC1-

DEADLINE FOR FIRST ANNUAL REPORT

Pub. L. 110-387, title VII, Sec. 708(b), Oct. 10, 2008, 122 Stat. 4140, provided that: "The Secretary of Veterans Affairs shall submit the first report required under section 8119(a) of title 38, United States Code, as added by subsection (a), by not later than 90 days after the date of the enactment of this Act [Oct. 10, 2008]."

-End-

-CITE-

38 USC SUBCHAPTER II - PROCUREMENT AND SUPPLY 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY
SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

SUBCHAPTER II - PROCUREMENT AND SUPPLY

-End-

-CITE-

38 USC Sec. 8121 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

Sec. 8121. Revolving supply fund

-STATUTE-

(a) The revolving supply fund established for the operation and maintenance of a supply system for the Department (including procurement of supplies, equipment, and personal services and the repair and reclamation of used, spent, or excess personal property) shall be -

(1) available without fiscal year limitations for all expenses necessary for the operation and maintenance of such supply system;

(2) reimbursed from appropriations for the cost of all services, equipment, and supplies furnished, at rates determined by the Secretary on the basis of estimated or actual direct cost (which may be based on the cost of recent significant purchases of the equipment or supply item involved) and indirect cost; and

(3) credited with advances from appropriations for activities to which services or supplies are to be furnished, and all other receipts resulting from the operation of the fund, including property returned to the supply system when no longer required by activities to which it had been furnished, the proceeds of disposal of scrap, excess or surplus personal property of the fund, and receipts from carriers and others for loss of or damage to personal property.

(b) The Secretary may authorize the Secretary of Defense to make purchases through the fund in the same manner as activities of the Department. When services, equipment, or supplies are furnished to the Secretary of Defense through the fund, the reimbursement required by paragraph (2) of subsection (a) shall be made from appropriations made to the Department of Defense, and when services or supplies are to be furnished to the Department of Defense, the fund may be credited, as provided in paragraph (3) of subsection (a), with advances from appropriations available to the Department of Defense.

(c) At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Secretary determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund.

(d) An adequate system of accounts for the fund shall be maintained on the accrual method, and financial reports prepared on the basis of such accounts. An annual business type budget shall be prepared for operations under the fund.

(e) The Secretary is authorized to capitalize, at fair and reasonable values as determined by the Secretary, all supplies and materials and depot stocks of equipment on hand or on order.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1253, Sec. 5011; amended Pub. L. 87-314, Sept. 26, 1961, 75 Stat. 675; Pub. L. 94-581, title

II, Sec. 210(e)(6), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 5021, Pub. L. 96-22, title III, Sec. 301(b)(1), June 13, 1979, 93 Stat. 61; Pub. L. 96-330, title IV, Sec. 402(a), Aug. 26, 1980, 94 Stat. 1051; renumbered Sec. 8121, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 108-170, title IV, Sec. 403(a), Dec. 6, 2003, 117 Stat. 2062.)

-MISC1-

AMENDMENTS

2003 - Pub. L. 108-170 redesignated last sentence of subsec. (a) as subsec. (c), added subsec. (b), and redesignated former subsecs. (b) and (c) as (d) and (e), respectively.

1991 - Pub. L. 102-40 renumbered section 5021 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in par. (2) and in last sentence.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in introductory provisions.

Subsec. (c). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

1980 - Subsec. (a). Pub. L. 96-330 substituted "actual direct cost (which may be based on the cost of recent significant purchases of the equipment or supply item involved)" for "actual direct" in par. (2), and, in provisions following par. (3), substituted "At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Administrator determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund" for "At the end of each fiscal year, any net income of the fund, after making provision for prior losses, shall be covered into the Treasury of the United States as miscellaneous receipts".

1976 - Subsec. (c). Pub. L. 94-581 substituted "the Administrator" for "him".

1961 - Subsec. (a). Pub. L. 87-314 included among the purposes for which the supply fund was established, the repair and reclamation of used, spent, or excess personal property, and authorized the crediting of the fund with property returned to the supply system when no longer required by activities to which it had been furnished.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-170, title IV, Sec. 403(b), Dec. 6, 2003, 117 Stat. 2062, provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to funds appropriated for a fiscal year after fiscal year 2003."

EFFECTIVE DATE OF 1980 AMENDMENT

Section 402(b) of Pub. L. 96-330 provided that: "The amendments made by subsection (a) [amending this section] shall take effect as of October 1, 1979."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

-End-

-CITE-

38 USC Sec. 8122

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

Sec. 8122. Authority to procure and dispose of property and to
negotiate for common services

-STATUTE-

(a)(1) The Secretary may lease for a term not exceeding three years lands or buildings, or parts or parcels thereof, belonging to the United States and under the Secretary's control. Any lease made pursuant to this subsection to any public or nonprofit organization may be made without regard to the provisions of section 6101(b) to (d) of title 41. Notwithstanding section 1302 of title 40, or any other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease. Prior to the execution of any such lease, the Secretary shall give appropriate public notice of the Secretary's intention to do so in the newspaper of the community in which the lands or buildings to be leased are located. The proceeds from such leases, less expenses for maintenance, operation, and repair of buildings leased for living quarters, shall be covered into the Treasury of the United States as miscellaneous receipts.

(2) Except as provided in paragraph (3), the Secretary may not during any fiscal year transfer to any other department or agency of the United States or to any other entity real property that is owned by the United States and administered by the Secretary unless the proposed transfer is described in the budget submitted to Congress pursuant to section 1105 of title 31 for that fiscal year.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary may, without regard to paragraph (2) of this subsection or any other provision of law relating to the disposition of real property by the United States, transfer to a State for use as the site of a State nursing-home or domiciliary facility real property described in subparagraph (E) of this paragraph which the Secretary determines to be excess to the needs of the Department.

(B) A transfer of real property may not be made under this paragraph unless -

(i) the Secretary has determined that the State has provided sufficient assurance that it has the resources (including any resources which are reasonably likely to be available to the State under subchapter III of chapter 81 of this title and section 1741 of this title) necessary to construct and operate a State home nursing or domiciliary care facility; and

(ii) the transfer is made subject to the conditions (I) that the property be used by the State for a nursing-home or domiciliary care facility in accordance with the conditions and limitations applicable to State home facilities constructed with

assistance under subchapter III of chapter 81 of this title, and (II) that, if the property is used at any time for any other purpose, all right, title, and interest in and to the property shall revert to the United States.

(C) A transfer of real property may not be made under this paragraph until -

(i) the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives, not later than June 1 of the year in which the transfer is proposed to be made (or the year preceding that year), a report providing notice of the proposed transfer; and

(ii) a period of 90 consecutive days elapses after the report is received by those committees.

(D) A transfer under this paragraph shall be made under such additional terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(E) Real property described in this subparagraph is real property that is owned by the United States and administered by the Secretary.

(b) The Secretary may, for the purpose of extending benefits to veterans and dependents, and to the extent the Secretary deems necessary, procure the necessary space for administrative purposes by lease, purchase, or construction of buildings, or by condemnation or declaration of taking, pursuant to law.

(c) The Secretary may procure laundry services, and other common services as specifically approved by the Secretary from nonprofit, tax-exempt educational, medical or community institutions, without regard to the requirements of section 302(c) (1) of the Federal Property and Administrative Services Act of 1949, as amended, whenever such services are not reasonably available from private commercial sources. Notwithstanding this exclusion, the provisions of sections 3901 and 3905 of title 41 shall apply to procurement authorized by this subsection.

(d)(1) Real property under the jurisdiction of the Secretary may not be declared excess by the Secretary and disposed of by the General Services Administration or any other entity of the Federal Government unless the Secretary determines that the property is no longer needed by the Department in carrying out its functions and is not suitable for use for the provision of services to homeless veterans by the Department or by another entity under an enhanced-use lease of such property under section 8162 of this title.

(2) The Secretary may transfer real property under this section, or under section 8118 of this title, if the Secretary -

(A) places a notice in the real estate section of local newspapers and in the Federal Register of the Secretary's intent to transfer that real property (including land, structures, and equipment associated with the property);

(B) holds a public hearing;

(C) provides notice to the Administrator of General Services of the Secretary's intention to transfer that real property and waits for 30 days to elapse after providing that notice; and

(D) after such 30-day period has elapsed, notifies the congressional veterans' affairs committees of the Secretary's intention to dispose of the property and waits for 60 days to elapse from the date of that notice.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1253, Sec. 5012; amended

Pub. L. 89-785, title II, Sec. 202(a), (b), Nov. 7, 1966, 80 Stat. 1373; Pub. L. 93-82, title III, Sec. 302(2), Aug. 2, 1973, 87 Stat. 195; Pub. L. 94-581, title II, Sec. 210(e)(7), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 5022 and amended Pub. L. 96-22, title III, Sec. 301(b), June 13, 1979, 93 Stat. 61; Pub. L. 96-330, title IV, Sec. 403(a), Aug. 26, 1980, 94 Stat. 1052; Pub. L. 97-295, Sec. 4(91), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-160, title IV, Sec. 401, Nov. 21, 1983, 97 Stat. 1004; Pub. L. 100-322, title IV, Sec. 421(a)(1), May 20, 1988, 102 Stat. 552; Pub. L. 100-687, div. B, title XV, Sec. 1505, Nov. 18, 1988, 102 Stat. 4135; renumbered Sec. 8122 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, Sec. 14(f)(5), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, Secs. 4(a)(1), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 107-95, Sec. 10(a), Dec. 21, 2001, 115 Stat. 920; Pub. L. 107-217, Sec. 3(j)(3), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108-422, title IV, Sec. 411(e)(1), (2), Nov. 30, 2004, 118 Stat. 2389, 2390; Pub. L. 111-350, Sec. 5(j)(6), Jan. 4, 2011, 124 Stat. 3850.)

-REFTEXT-

REFERENCES IN TEXT

Section 302(c) of the Federal Property and Administrative Services Act of 1949, referred to in subsec. (c), was section 302(c) of act June 30, 1949, ch. 288, 63 Stat. 393, which was classified to section 252(c) of former Title 41, Public Contracts, and was struck out by Pub. L. 98-369, div. B, title VII, Sec. 2714(a)(1)(B), July 18, 1984, 98 Stat. 1184.

-MISC1-

AMENDMENTS

2011 - Subsec. (a)(1). Pub. L. 111-350, Sec. 5(j)(6)(A), substituted "section 6101(b) to (d) of title 41" for "section 3709 of the Revised Statutes (41 U.S.C. 5)".

Subsec. (c). Pub. L. 111-350, Sec. 5(j)(6)(B), struck out "(41 U.S.C. 252(c))" after "1949, as amended" and substituted "sections 3901 and 3905 of title 41" for "section 304 of that Act (41 U.S.C. 254)".

2004 - Subsec. (a)(2). Pub. L. 108-422, Sec. 411(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(2)(A) Except as provided in paragraph (3) of this subsection, the Secretary may not during any fiscal year transfer to another Federal agency or to a State (or any political subdivision of a State) any interest in real property described in subparagraph (B) of this paragraph unless (i) the transfer (as proposed) was described in the budget for that fiscal year submitted to Congress pursuant to section 1105 of title 31, and (ii) the Department receives compensation equal to the fair market value of the property.

"(B) An interest in real property described in this subparagraph is an interest in real property that is owned by the United States and administered by the Secretary and that has an estimated value in excess of \$50,000.

"(C) Amounts realized from the transfer of any interest in real property described in subparagraph (B) of this paragraph shall be deposited in the nursing home revolving fund established under section 8116 of this title."

Subsec. (d). Pub. L. 108-422, Sec. 411(e)(2), designated existing provisions as par. (1) and added par. (2).

2002 - Subsec. (a)(1). Pub. L. 107-217 substituted "section 1302 of title 40" for "section 321 of the Act of June 30, 1932 (40

U.S.C. 303b)".

2001 - Subsec. (d). Pub. L. 107-95 inserted before period at end "and is not suitable for use for the provision of services to homeless veterans by the Department or by another entity under an enhanced-use lease of such property under section 8162 of this title".

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5022 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 5(c)(1), substituted "1741" for "641" in par. (3)(B)(i).

Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" and "Secretary's" for "Administrator's" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in pars. (2)(A) and (3)(A).

Pub. L. 102-83, Sec. 4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in pars. (2)(B) and (3)(E).

Pub. L. 102-54 amended subsec. (a)(3)(A) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "State" for "State home" before "nursing-home" and "this paragraph" for "the paragraph" before "which".

Pub. L. 102-40, Sec. 402(d)(1), substituted "8116" for "5016" in par. (2)(C).

Subsecs. (b), (c). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (d). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

1988 - Subsec. (a)(2). Pub. L. 100-687, Sec. 1505(1), substituted "Except as provided in paragraph (3) of this subsection, the" for "The" at beginning.

Pub. L. 100-322 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(A) Before entering into a transaction described in subparagraph (B) of this paragraph with respect to any real property owned by the United States and administered by the Veterans' Administration which has an estimated value in excess of \$50,000, the Administrator shall submit a report of the facts concerning the proposed transaction to the Committees on Veterans' Affairs of the Senate and House of Representatives, and such transaction may not then be entered into until after the expiration of 180 days from the date upon which the report is submitted.

"(B) Subparagraph (A) of this paragraph applies to (i) any transfer of an interest in real property to another Federal agency or to a State (or any political subdivision of a State), and (ii) any report to a Federal disposal agency of excess real property.

"(C) A statement in an instrument of conveyance, including a lease, that the requirements of this paragraph have been met, or that the conveyance is not subject to this paragraph, is conclusive for the purposes of all matters pertaining to the ownership of any right or interest in the property conveyed by such instrument."

Subsec. (a)(3). Pub. L. 100-687, Sec. 1505(2), added par. (3).

1983 - Subsec. (a)(2)(A). Pub. L. 98-160, Sec. 401(1), substituted "180 days" for "30 days".

Subsec. (d). Pub. L. 98-160, Sec. 401(2), added subsec. (d).

1982 - Subsec. (a). Pub. L. 97-295, Sec. 4(91)(A), substituted "of" for "entitled 'An Act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933, and for other purposes,' approved" after "section

321 of the Act".

Subsec. (c). Pub. L. 97-295, Sec. 4(91)(B), inserted "(41 U.S.C. 254)" after "section 304 of that Act".

1980 - Subsec. (a). Pub. L. 96-330 designated existing provisions as par. (1) and added par. (2).

1979 - Subsec. (b). Pub. L. 96-22 substituted "necessary space for administrative purposes by lease" for "necessary space for administrative, clinical, medical, and outpatient treatment purposes by lease".

1976 - Subsec. (a). Pub. L. 94-581, Sec. 210(e)(7)(A), substituted "under the Administrator's control" for "under his control" and "notice of the Administrator's intention" for "notice of his intention".

Subsec. (b). Pub. L. 94-581, Sec. 210(e)(7)(B), substituted "the Administrator" for "he".

Subsec. (c). Pub. L. 94-581, Sec. 210(e)(7)(C), substituted "the Administrator" for "him".

1973 - Subsec. (a). Pub. L. 93-82 inserted provisions that leases under this subsection may be made without regard to section 5 of title 41, that notwithstanding section 303b of title 40 or any other provision of law, such leases may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease and that prior to the execution of the leases, the Administrator shall give notice of his intention in the local newspaper.

1966 - Pub. L. 89-785 inserted "and to negotiate for common services" in section catchline and added subsec. (c).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-22 effective Oct. 1, 1979, except that the amendment shall not apply with respect to the acquisition, construction, or alteration of any medical facilities if the acquisition, construction, or alteration (not including exchange) was approved by the President before Oct. 1, 1979, see section 302 of Pub. L. 96-22, set out as an Effective Date note under section 8101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

TRANSFER OF REAL PROPERTY DEEMED DESCRIBED IN BUDGET FOR FISCAL YEAR 1989

Section 421(a)(2) of Pub. L. 100-322 provided that any proposed transfer of real property described in subsec. (a)(2)(B) of this section that was described in a report submitted to Committees on Veterans' Affairs of Senate and House of Representatives by Administrator not later than 30 days after May 20, 1988, was to be deemed for purposes of subsec. (a)(2)(A) of this section to have been described in the President's budget for fiscal year 1989.

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

38 USC Sec. 8123

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

Sec. 8123. Procurement of prosthetic appliances

-STATUTE-

The Secretary may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the Secretary may determine to be proper, without regard to any other provision of law.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1254, Sec. 5013; amended Pub. L. 94-581, title II, Sec. 210(e)(8), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 5023, Pub. L. 96-22, title III, Sec. 301(b)(1), June 13, 1979, 93 Stat. 61; renumbered Sec. 8123, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5023 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" in two places.

1976 - Pub. L. 94-581 substituted "the Administrator" for "he".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

-End-

-CITE-

38 USC Sec. 8124

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY
SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

Sec. 8124. Grant of easements in Government-owned lands

-STATUTE-

The Secretary, whenever the Secretary deems it advantageous to the Government and upon such terms and conditions as the Secretary deems advisable, may grant on behalf of the United States to any State, or any agency or political subdivision thereof, or to any public-service company, easements in and rights-of-way over lands belonging to the United States which are under the Secretary's supervision and control. Such grant may include the use of such easements or rights-of-way by public utilities to the extent authorized and under the conditions imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the Secretary deems necessary or desirable, is hereby ceded to the State in which the land is located. The Secretary may accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as the Secretary may deem necessary or desirable over the land so acquired. Any such easement or right-of-way shall be terminated upon abandonment or nonuse of the same and all right, title, and interest in the land covered thereby shall thereupon revert to the United States or its assignee.

-SOURCE-

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1254, Sec. 5014; amended Pub. L. 94-581, title II, Sec. 210(e)(9), Oct. 21, 1976, 90 Stat. 2865; renumbered Sec. 5024, Pub. L. 96-22, title III, Sec. 301(b)(1), June 13, 1979, 93 Stat. 61; renumbered Sec. 8124, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5024 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing and "Secretary's" for "Administrator's".

1976 - Pub. L. 94-581 substituted "the Administrator" for "he" wherever appearing and "under the Administrator's supervision" for "under his supervision".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

-End-

-CITE-

38 USC Sec. 8125

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

Sec. 8125. Procurement of health-care items

-STATUTE-

(a) Except as provided in subsections (b) and (c) of this section, the Secretary may not procure health-care items under local contracts.

(b)(1) A health-care item for use by the Department may be procured under a local contract if -

(A) the procurement is within the limits prescribed in paragraph (3) of this subsection; and

(B)(i) the item is not otherwise available to the Department medical center concerned,

(ii) procurement of the item by a local contract is necessary for the effective furnishing of health-care services or the conduct of a research or education program at a Department medical center, as determined by the director of the center in accordance with regulations which the Under Secretary for Health shall prescribe, or

(iii) procurement under a local contract is demonstrably more cost-effective for the item.

(2) In the case of the need for an emergency procurement of a health-care item, such item may be procured under a local contract, but no greater quantity of such item may be procured by a local contract than is reasonably necessary to meet the emergency need and the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

(3)(A) Except as provided in subparagraphs (C) and (D) of this paragraph, not more than 20 percent of the total of all health-care items procured by the Department in any fiscal year (measured as a percent of the total cost of all such health-care items procured by the Department in that fiscal year) may be procured under local contracts.

(B) Local contracts for the procurement of health-care items shall, to the maximum extent feasible, be awarded to regular dealers or manufacturers engaged in the wholesale supply of such items.

(C) The Secretary may increase for a fiscal year the percentage specified in subparagraph (A) of this section to a percentage not greater than 30 percent if the Secretary, based on the experience of the Department during the two fiscal years preceding such fiscal year, determines that the increase and the amount of the increase are necessary in the interest of the effective furnishing of health-care services by the Department. The authority to increase such percentage may not be delegated.

(D) Items procured through an emergency procurement shall not be counted for the purpose of this paragraph.

(c) A provision of law that is inconsistent with subsection (a) or (b) of this section shall not apply, to the extent of the inconsistency, to the procurement of a health-care item for use by the Department.

(d)(1) Not later than December 1 of each year, the director of each Department medical center shall transmit to the Secretary a report containing a list indicating the quantity of each health-care item procured at that medical center under a local contract during the preceding fiscal year and the total amount paid for such item during such fiscal year.

(2) Not later than February 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out this section during the preceding fiscal year.

(e) For the purposes of this section:

(1) The term "health-care item" includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65 or 66. Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73. Such term does not include perishable items.

(2) The term "local contract" means a contract entered into by a Department medical center for procurement of an item for use by that medical center.

(3) The term "emergency procurement" means a procurement necessary to meet an emergency need, affecting the health or safety of a person being furnished health-care services by the Department, for an item.

-SOURCE-

(Added Pub. L. 100-322, title IV, Sec. 403(a)(1), May 20, 1988, 102 Stat. 543, Sec. 5025; amended Pub. L. 100-687, div. B, title XV, Sec. 1507(b), (c), Nov. 18, 1988, 102 Stat. 4136, 4137; renumbered Sec. 8125, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 107-14, Sec. 8(a)(15), June 5, 2001, 115 Stat. 35.)

-MISC1-

AMENDMENTS

2001 - Subsec. (d)(1). Pub. L. 107-14, Sec. 8(a)(15)(A), struck out "(beginning in 1992)" after "each year".

Subsec. (d)(2). Pub. L. 107-14, Sec. 8(a)(15)(B), struck out "(beginning in 1993)" after "each year".

Subsec. (d)(3). Pub. L. 107-14, Sec. 8(a)(15)(C), struck out par. (3) which read as follows: "Not later than February 1 of each year from 1989 through 1992, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out this section during the preceding fiscal year. The first such report shall contain information showing the percentage (measured by cost) of the total of all health-care items procured by the Department during fiscal year 1988 that were procured through local contracts. The other reports under this paragraph shall contain information showing the percentage (measured by cost) of the total of all health-care items procured by the Department, and by each Department medical center, during the fiscal year covered by the report that were purchased through local contracts and, in the case of each medical center at which the percentage was greater than 20 percent, an explanation of the reasons why that occurred."

1992 - Subsec. (b)(1)(B)(ii). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991 - Pub. L. 102-40 renumbered section 5025 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (b). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in par. (3)(C).

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsec. (c). Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsecs. (d), (e). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1988 - Subsec. (d)(1). Pub. L. 100-687, Sec. 1507(b)(1), inserted "(beginning in 1992)" after "of each year".

Subsec. (d)(2). Pub. L. 100-687, Sec. 1507(b)(2), inserted "(beginning in 1993)" after "of each year".

Subsec. (d)(3). Pub. L. 100-687, Sec. 1507(b)(3), added par. (3).

Subsec. (e)(1). Pub. L. 100-687, Sec. 1507(c), substituted "65 or 66" for "65, 66, or 73" and inserted after first sentence "Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Administrator) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73."

EFFECTIVE DATE

Section 403(b) of Pub. L. 100-322, as amended by Pub. L. 100-687, div. B, title XV, Sec. 1507(a), Nov. 18, 1988, 102 Stat. 4136, provided that:

"(1) Subsections (a), (b)(1), and (b)(2) of section 5025 [now 8125] of title 38, United States Code (as added by subsection (a)), shall take effect one year after the date of the enactment of this Act [May 20, 1988].

"(2) Subsection (b)(3) of such section shall apply to health-care items procured for use by the Veterans' Administration [now Department of Veterans Affairs] after September 30, 1990."

STANDARDIZATION OF MEDICAL AND PHARMACEUTICAL ITEMS

Section 402 of Pub. L. 100-322, as amended by Pub. L. 100-687, div. B, title XV, Sec. 1508, Nov. 18, 1988, 102 Stat. 4137, directed Administrator, not later than Oct. 1, 1989, to develop and fully implement an agency-wide plan for cost-effective standardization of health-care items procured by Veterans' Administration.

-End-

-CITE-

38 USC Sec. 8126

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

Sec. 8126. Limitation on prices of drugs procured by Department and certain other Federal agencies

-STATUTE-

(a) Each manufacturer of covered drugs shall enter into a master agreement with the Secretary under which -

(1) beginning January 1, 1993, the manufacturer shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer;

(2) with respect to each covered drug of the manufacturer procured by a Federal agency described in subsection (b) on or after January 1, 1993, that is purchased under depot contracting systems or listed on the Federal Supply Schedule, the manufacturer has entered into and has in effect a pharmaceutical pricing agreement with the Secretary (or the Federal agency involved, if the Secretary delegates to the Federal agency the authority to enter into such a pharmaceutical pricing agreement) under which the price charged during the one-year period beginning on the date on which the agreement takes effect may not exceed 76 percent of the non-Federal average manufacturer price (less the amount of any additional discount required under subsection (c)) during the one-year period ending one month before such date (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period are not available, during such period as the Secretary considers appropriate), except that such price may nominally exceed such amount if found by the Secretary to be in the best interests of the Department or such Federal agencies;

(3) with respect to each covered drug of the manufacturer procured by a State home receiving funds under section 1741 of this title, the price charged may not exceed the price charged under the Federal Supply Schedule at the time the drug is procured; and

(4) unless the manufacturer meets the requirements of paragraphs (1), (2), and (3), the manufacturer may not receive payment for the purchase of drugs or biologicals from -

- (A) a State plan under title XIX of the Social Security Act, except as authorized under section 1927(a)(3) of such Act,
- (B) any Federal agency described in subsection (b), or
- (C) any entity that receives funds under the Public Health Service Act.

(b) The Federal agencies described in this subsection are as follows:

- (1) The Department.
- (2) The Department of Defense.
- (3) The Public Health Service, including the Indian Health Service.
- (4) The Coast Guard.

(c) With respect to any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2), beginning on or after January 1, 1993, the manufacturer shall provide a discount in an amount equal to the amount by which the change in non-Federal price exceeds the amount equal to -

- (1) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the last day

of the month preceding the month during which the contract for the covered drug goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period as the Secretary considers appropriate); multiplied by

(2) the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last month of the period described in paragraph (1) and the last month preceding the month during which the contract goes into effect for which Consumer Price Index data is available.

(d) In the case of a covered drug of a manufacturer that has entered into a multi-year contract with the Secretary under subsection (a)(2) for the procurement of the drug -

(1) during any one-year period that follows the first year for which the contract is in effect, the contract price charged for the drug may not exceed the contract price charged during the preceding one-year period, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) during the 12-month period ending with the last month of such preceding one-year period for which Consumer Price Index data is available; and

(2) in applying subsection (c) to determine the amount of the discount provided with respect to the drug during a year that follows the first year for which the contract is in effect, any reference in such subsection to "the month during which the contract goes into effect" shall be considered a reference to the first month of such following year.

(e)(1) The manufacturer of any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2) shall -

(A) not later than 30 days after the first day of the last quarter that begins before the agreement takes effect (or, in the case of an agreement that takes effect on January 1, 1993, not later than December 4, 1992), report to the Secretary the non-Federal average manufacturer price for the drug during the one-year period that ends on the last day of the previous quarter; and

(B) not later than 30 days after the last day of each quarter for which the agreement is in effect, report to the Secretary the non-Federal average manufacturer price for the drug during such quarter.

(2) The provisions of subparagraphs (B) and (C) of section 1927(b)(3) of the Social Security Act shall apply to drugs described in paragraph (1) and the Secretary in the same manner as such provisions apply to covered outpatient drugs and the Secretary of Health and Human Services under such subparagraphs, except that references in such subparagraphs to prices or information reported or required under "subparagraph (A)" shall be deemed to refer to information reported under paragraph (1).

(3) In order to determine the accuracy of a drug price that is reported to the Secretary under paragraph (1), the Secretary may audit the relevant records of the manufacturer or of any wholesaler that distributes the drug, and may delegate the authority to audit such records to the appropriate Federal agency described in subsection (b).

(4) Any information contained in a report submitted to the Secretary under paragraph (1) or obtained by the Secretary through

any audit conducted under paragraph (3) shall remain confidential, except as the Secretary determines necessary to carry out this section and to permit the Comptroller General and the Director of the Congressional Budget Office to review the information provided.

(f) The Secretary shall supply to the Secretary of Health and Human Services -

(1) upon the execution or termination of any master agreement, the name of the manufacturer, and

(2) on a quarterly basis, a list of manufacturers who have entered into master agreements under this section.

(g)(1) Any reference in this section to a provision of the Social Security Act shall be deemed to be a reference to the provision as in effect on November 4, 1992.

(2) A manufacturer is deemed to meet the requirements of subsection (a) if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of this section (as in effect immediately after the enactment of this section), and would have entered into an agreement under this section (as such section was in effect at such time), but for a legislative change in this section after November 4, 1992.

(h) In this section:

(1) The term "change in non-Federal price" means, with respect to a covered drug that is subject to an agreement under this section, an amount equal to -

(A) the non-Federal average manufacturer price of the drug during the 3-month period that ends with the month preceding the month during which a contract goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period as the Secretary considers appropriate); minus

(B) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the end of the period described in subparagraph (A) (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period preceding the period described in subparagraph (A) as the Secretary considers appropriate).

(2) The term "covered drug" means -

(A) a drug described in section 1927(k)(7)(A)(ii) of the Social Security Act, or that would be described in such section but for the application of the first sentence of section 1927(k)(3) of such Act;

(B) a drug described in section 1927(k)(7)(A)(iv) of the Social Security Act, or that would be described in such section but for the application of the first sentence of section 1927(k)(3) of such Act; or

(C) any biological product identified under section 600.3 of title 21, Code of Federal Regulations.

(3) The term "depot" means a centralized commodity management system through which covered drugs procured by an agency of the Federal Government are -

(A) received, stored, and delivered through -

(i) a federally owned and operated warehouse system, or

(ii) a commercial entity operating under contract with such agency; or

(B) delivered directly from the commercial source to the entity using such covered drugs.

(4) The term "manufacturer" means any entity which is engaged in -

(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(5) The term "non-Federal average manufacturer price" means, with respect to a covered drug and a period of time (as determined by the Secretary), the weighted average price of a single form and dosage unit of the drug that is paid by wholesalers in the United States to the manufacturer, taking into account any cash discounts or similar price reductions during that period, but not taking into account -

(A) any prices paid by the Federal Government; or

(B) any prices found by the Secretary to be merely nominal in amount.

(6) The term "weighted average price" means, with respect to a covered drug and a period of time (as determined by the Secretary) an amount equal to -

(A) the sum of the products of the average price per package unit of each quantity of the drug sold during the period and the number of package units of the drug sold during the period; divided by

(B) the total number of package units of the drug sold during the period.

(i)(1) If the Secretary modifies a multi-year contract described in subsection (d) to include a covered drug of the manufacturer that was not available for inclusion under the contract at the time the contract went into effect, the price of the drug shall be determined as follows:

(A) For the portion of the first contract year during which the drug is so included, the price of the drug shall be determined in accordance with subsection (a)(2), except that the reference in such subsection to "the one-year period beginning on the date the agreement takes effect" shall be considered a reference to such portion of the first contract year.

(B) For any subsequent contract year, the price of the drug shall be determined in accordance with subsection (d), except that each reference in such subsection to "the first year for which the contract is in effect" shall be considered a reference to the portion of the first contract year during which the drug is included under the contract.

(2) In this subsection, the term "contract year" means any one-year period for which a multi-year contract described in subsection (d) is in effect.

-SOURCE-

(Added Pub. L. 102-585, title VI, Sec. 603(a)(1), Nov. 4, 1992, 106 Stat. 4971; amended Pub. L. 103-18, Sec. 1(a), Apr. 12, 1993, 107

Stat. 53; Pub. L. 103-446, title XII, Sec. 1201(e)(27), (f)(6), Nov. 2, 1994, 108 Stat. 4686, 4687; Pub. L. 104-106, div. A, title VII, Sec. 737(a), Feb. 10, 1996, 110 Stat. 383; Pub. L. 105-115, title I, Sec. 125(b)(2)(E), Nov. 21, 1997, 111 Stat. 2325.)

-REFTEXT-

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(4)(A), (e)(2), (g)(1), and (h)(2)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (Sec. 301 et seq.) of Title 42, The Public Health and Welfare. Title XIX of the Act is classified generally to subchapter XIX (Sec. 1396 et seq.) of chapter 7 of Title 42. Section 1927 of the Act is classified to section 1396r-8 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Public Health Service Act, referred to in subsec. (a)(4)(C), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (Sec. 201 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Enactment of this section, referred to in subsec. (g)(2), means enactment of Pub. L. 102-585, which enacted this section and was approved Nov. 4, 1992.

-MISC1-

AMENDMENTS

1997 - Subsec. (h)(2). Pub. L. 105-115 inserted "or" at end of subpar. (B), substituted a period for "; or" at end of subpar. (C), and struck out subpar. (D), which read as follows: "insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act."

1996 - Subsec. (b)(4). Pub. L. 104-106 added par. (4).

1994 - Subsec. (e)(1)(A). Pub. L. 103-446, Sec. 1201(e)(27)(A), (f)(6)(A), substituted "December 4, 1992" for "30 days after the date of the enactment of this section" and "one-year period" for "1-year period".

Subsec. (f)(2). Pub. L. 103-446, Sec. 1201(e)(27)(B), substituted a period for ", and" at end.

Subsec. (g)(1), (2). Pub. L. 103-446, Sec. 1201(f)(6)(B), substituted "November 4, 1992" for "the date of the enactment of this section".

1993 - Subsec. (a)(2). Pub. L. 103-18, Sec. 1(a)(1), struck out "preceding such date" before "as the Secretary considers appropriate".

Subsec. (c). Pub. L. 103-18, Sec. 1(a)(2), in introductory provisions, struck out "for calendar quarters" after "subsection (a)(2),", and in par. (1), struck out "preceding the month during which the contract goes into effect" after "during such period" and substituted "multiplied by" for "increased by".

Subsec. (d)(1). Pub. L. 103-18, Sec. 1(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "during any one-year period that follows the first year for which the contract is in effect, the price charged may not exceed the price charged during the preceding one-year period, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last months of such one-year periods for which Consumer Price Index data is available; and".

Subsec. (i). Pub. L. 103-18, Sec. 1(a)(4), added subsec. (i).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 737(b) of Pub. L. 104-106 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 603 of the Veterans Health Care Act of 1992 (Public Law 102-585; 106 Stat. 4971)."

EFFECTIVE DATE OF 1993 AMENDMENT

Section 1(b) of Pub. L. 103-18 provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 603 of the Veterans Health Care Act of 1992 [Pub. L. 102-585]."

-TRANS-

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

-End-

-CITE-

38 USC Sec. 8127

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY
SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

Sec. 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

-STATUTE-

(a) Contracting Goals. - (1) In order to increase contracting opportunities for small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities, the Secretary shall -

(A) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans who are not veterans with service-connected disabilities in accordance with paragraph (2); and

(B) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans with service-connected disabilities in accordance with paragraph (3).

(2) The goal for a fiscal year for participation under paragraph

(1)(A) shall be determined by the Secretary.

(3) The goal for a fiscal year for participation under paragraph (1)(B) shall be not less than the Government-wide goal for that fiscal year for participation by small business concerns owned and controlled by veterans with service-connected disabilities under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(4) The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.

(b) Use of Noncompetitive Procedures for Certain Small Contracts. - For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 134 of title 41), a contracting officer of the Department may use procedures other than competitive procedures.

(c) Sole Source Contracts for Contracts Above Simplified Acquisition Threshold. - For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if -

(1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 134 of title 41) but will not exceed \$5,000,000; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

(d) Use of Restricted Competition. - Except as provided in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

(e) Eligibility of Small Business Concerns. - A small business concern may be awarded a contract under this section only if the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f).

(f) Database of Veteran-Owned Businesses. - (1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns.

(2)(A) To be eligible for inclusion in the database, such a veteran shall submit to the Secretary such information as the Secretary may require with respect to the small business concern or the veteran. Application for inclusion in the database shall constitute permission under section 552a of title 5 (commonly referred to as the Privacy Act) for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application.

(B) If the Secretary receives an application for inclusion in the database from an individual whose status as a veteran cannot be verified because the Secretary does not maintain information with respect to the veteran status of the individual, the Secretary may not include the small business concern owned and controlled by the individual in the database maintained by the Secretary until the Secretary receives such information as may be necessary to verify that the individual is a veteran.

(3) Information maintained in the database shall be submitted on a voluntary basis by such veterans.

(4) No small business concern may be listed in the database until the Secretary has verified that -

(A) the small business concern is owned and controlled by veterans; and

(B) in the case of a small business concern for which the person who owns and controls the concern indicates that the person is a veteran with a service-connected disability, that the person is a veteran with a service-connected disability.

(5) The Secretary shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(6) If the Secretary determines that the public dissemination of certain types of information maintained in the database is inappropriate, the Secretary shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(g) Enforcement Penalties for Misrepresentation. - Any business concern that is determined by the Secretary to have misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary.

(h) Treatment of Businesses After Death of Veteran-Owner. - (1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(A) The date on which the surviving spouse remarries.

(B) The date on which the surviving spouse relinquishes an ownership interest in the small business concern.

(C) The date that is ten years after the date of the veteran's death.

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability.

(i) Priority for Contracting Preferences. - Preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans with service-connected disabilities.

(2) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans that are not covered by paragraph (1).

(3) Contracts awarded pursuant to -

(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(B) section 31 of such Act (15 U.S.C. 657a).

(4) Contracts awarded pursuant to any other small business contracting preference.

(j) Applicability of Requirements to Contracts. - (1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods or services, the Secretary shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of this section in acquiring such goods or services.

(2) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

(k) Annual Reports. - Not later than December 31 each year, the Secretary shall submit to Congress a report on small business contracting during the fiscal year ending in such year. Each report shall include, for the fiscal year covered by such report, the following:

(1) The percentage of the total amount of all contracts awarded by the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(2) The percentage of the total amount of all such contracts awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(3) The percentage of the total amount of all contracts awarded by each Administration of the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(4) The percentage of the total amount of all contracts awarded by each such Administration during that fiscal year that were awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(l) Definitions. - In this section:

(1) The term "small business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term "small business concern owned and controlled by veterans" means a small business concern -

(A)(i) not less than 51 percent of which is owned by one or more veterans or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) the management and daily business operations of which are controlled by one or more veterans; or

(B) not less than 51 percent of which is owned by one or more veterans with service-connected disabilities that are permanent and total who are unable to manage the daily business operations of such concern or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more such veterans.

-SOURCE-

(Added Pub. L. 109-461, title V, Sec. 502(a)(1), Dec. 22, 2006, 120 Stat. 3431; amended Pub. L. 110-389, title VIII, Sec. 806, Oct. 10, 2008, 122 Stat. 4189; Pub. L. 111-275, title I, Sec. 104(b)(1), Oct. 13, 2010, 124 Stat. 2867; Pub. L. 111-350, Sec. 5(j)(7), Jan. 4, 2011, 124 Stat. 3850.)

-REFTEXT-

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (j)(2), is Pub. L. 85-536, Sec. 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (Sec. 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

-MISC1-

AMENDMENTS

2011 - Subsecs. (b), (c)(2). Pub. L. 111-350 substituted "section 134 of title 41" for "section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)".

2010 - Subsec. (f)(2). Pub. L. 111-275, Sec. 104(b)(1)(A), designated existing provisions as subpar. (A), inserted at end of subpar. (A) "Application for inclusion in the database shall constitute permission under section 552a of title 5 (commonly referred to as the Privacy Act) for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application.", and added subpar. (B).

Subsec. (f)(4). Pub. L. 111-275, Sec. 104(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: "In maintaining the database, the Secretary shall carry out at least the following two verification functions:

"(A) Verification that each small business concern listed in the database is owned and controlled by veterans.

"(B) In the case of a veteran who indicates a service-connected disability, verification of the service-disabled status of such veteran."

2008 - Subsecs. (j) to (l). Pub. L. 110-389 added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (l), respectively.

EFFECTIVE DATE

Pub. L. 109-461, title V, Sec. 502(d), Dec. 22, 2006, 120 Stat. 3435, provided that: "This section [enacting this section and provisions set out as a note below] and the amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006]."

TRANSITION PROVISIONS

Pub. L. 111-275, title I, Sec. 104(b)(2), Oct. 13, 2010, 124 Stat. 2868, provided that: "In the case of a small business concern included in the database as of the date of the enactment of this Act [Oct. 13, 2010] for which, as of such date, the Secretary of Veterans Affairs has not verified the status of such concern in accordance with paragraph (4) of subsection (f) of section 8127 of title 38, United States Code, as amended by paragraph (1), not later than 60 days after the date of the enactment of this Act, the Secretary shall notify the person who owns and controls the concern that -

"(A) the Secretary is required to verify the status of the concern in accordance with such paragraph, as so amended;

"(B) verification of such status shall require that the person who owns and controls the concern apply for inclusion in the database in accordance with such subsection, as so amended;

"(C) application for inclusion in the database shall constitute permission under section 552a of title 5, United States Code (commonly referred to as the Privacy Act), for the Secretary to access such personal information maintained by the Secretary as may be necessary to verify the information contained in the application; and

"(D) the person who owns and controls the concern must submit to the Secretary all information required by the Secretary under this paragraph within 90 days of receiving the Secretary's notice of such requirement or the concern shall be removed from the database."

Pub. L. 109-461, title V, Sec. 502(b), Dec. 22, 2006, 120 Stat. 3435, provided that: "A small business concern that is listed in any small business database maintained by the Secretary of Veterans Affairs on the date of the enactment of this Act [Dec. 22, 2006] shall be presumed to be eligible for inclusion in the database under subsection (f) of section 8127 of title 38, United States Code, as added by subsection (a), during the period beginning on the effective date of that section [see Effective Date note above] and ending one year after such effective date. Such a small business concern may be removed from the database during that period if it is found not to be a small business concern owned and controlled by veterans (as defined in subsection (k) of such section)."

-End-

-CITE-

38 USC Sec. 8128

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER II - PROCUREMENT AND SUPPLY

-HEAD-

Sec. 8128. Small business concerns owned and controlled by veterans: contracting priority

-STATUTE-

(a) Contracting Priority. - In procuring goods and services pursuant to a contracting preference under this title or any other provision of law, the Secretary shall give priority to a small business concern owned and controlled by veterans, if such business concern also meets the requirements of that contracting preference.

(b) Definition. - For purposes of this section, the term "small business concern owned and controlled by veterans" means a small business concern that is included in the small business database maintained by the Secretary under section 8127(f) of this title.

-SOURCE-

(Added Pub. L. 109-461, title V, Sec. 503(a)(1), Dec. 22, 2006, 120 Stat. 3435.)

-MISC1-

EFFECTIVE DATE

Pub. L. 109-461, title V, Sec. 503(b), Dec. 22, 2006, 120 Stat. 3436, provided that: "This section [enacting this section] and the amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006]."

-End-

-CITE-

38 USC SUBCHAPTER III - STATE HOME FACILITIES FOR
FURNISHING DOMICILIARY, NURSING HOME, AND
HOSPITAL CARE 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY,
NURSING HOME, AND HOSPITAL CARE

-HEAD-

SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY,
NURSING HOME, AND HOSPITAL CARE

-MISC1-

AMENDMENTS

1977 - Pub. L. 95-62, Sec. 4(a), July 5, 1977, 91 Stat. 263,
substituted "DOMICILIARY, NURSING HOME, AND HOSPITAL CARE" for
"NURSING HOME CARE" in subchapter heading.

-End-

-CITE-

38 USC Sec. 8131 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY,
NURSING HOME, AND HOSPITAL CARE

-HEAD-

Sec. 8131. Definitions

-STATUTE-

For the purpose of this subchapter -

(1) The veteran population of each State shall be determined on the basis of the latest figures certified by the Department of Commerce.

(2) The term "State" does not include any possession of the United States.

(3) The term "construction" means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, adult day health, or hospital care in State homes, and the provision of initial equipment for any such buildings.

(4) The term "cost of construction" means the amount found by the Secretary to be necessary for a construction project, including architect fees, but excluding land acquisition costs.

-SOURCE-

(Added Pub. L. 88-450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 501, Sec. 5031; amended Pub. L. 94-581, title II, Sec. 206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95-62, Sec. 3(1), (2), July 5, 1977, 91 Stat. 262; Pub. L. 99-576, title II, Sec. 224(d), Oct. 28, 1986, 100 Stat. 3263; renumbered Sec. 8131, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 104-262, title III, Sec. 342(b)(1), Oct. 9, 1996, 110 Stat. 3206.)

-MISC1-

AMENDMENTS

1996 - Par. (3). Pub. L. 104-262 inserted "adult day health," before "or hospital care".

1991 - Pub. L. 102-40 renumbered section 5031 of this title as this section.

Par. (4). Pub. L. 102-83 substituted "Secretary" for "Administrator".

1986 - Pub. L. 99-576 redesignated pars. (a) to (d) as pars. (1) to (4), respectively.

1977 - Par. (c). Pub. L. 95-62, Sec. 3(1), inserted construction of new domiciliary buildings, expansion, remodeling, or alteration of existing domiciliary and hospital buildings, and provision of initial equipment for any such buildings to definition of "construction".

Par. (d). Pub. L. 95-62, Sec. 3(2), struck out provisions which had limited definition of "cost of construction" to the cost of construction of nursing home facilities.

1976 - Par. (a). Pub. L. 94-581 substituted "veteran" for "war veteran".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 224(e) of Pub. L. 99-576 provided that: "The amendments made by this section [amending this section and sections 5033 and 5035 [now 8133 and 8135] of this title] shall take effect on July 1, 1987."

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of Pub. L. 95-62 provided that:

"(a) Except as provided in subsection (b) of this section, the amendments made by this Act [amending this section and sections 5032 to 5036 [now 8132 to 8136] of this title and repealing section 644 of this title] shall be effective October 1, 1977.

"(b)(1) The terms and conditions of any grant made prior to October 1, 1977, under section 644 of title 38, United States Code

[former section 644 of this title], and regulations prescribed thereunder, shall remain in full force and effect unless modified, by the mutual agreement of the parties, in accordance with the provisions of subchapter III of chapter 81 of such title, and regulations prescribed thereunder, in effect after September 30, 1977.

"(2) With respect to any grant made prior to October 1, 1977, under subchapter III of chapter 81 of such title, the Administrator of Veterans' Affairs shall, upon application of a grantee, modify the terms and conditions of such grant to comply with the provisions of such subchapter as amended by this Act, and regulations prescribed thereunder, and shall promptly notify each such grantee of the grantee's right to request such modification."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

SHORT TITLE OF 1977 AMENDMENT

For short title of Pub. L. 95-62 as the "State Veterans' Home Assistance Improvement Act of 1977", see section 1 of Pub. L. 95-62, set out as a Short Title of 1977 Amendment note under section 101 of this title.

-End-

-CITE-

38 USC Sec. 8132

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY
SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

-HEAD-

Sec. 8132. Declaration of purpose

-STATUTE-

The purpose of this subchapter is to assist the several States to construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home, adult day health, or hospital care to veterans in State homes.

-SOURCE-

(Added Pub. L. 88-450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 501, Sec. 5032; amended Pub. L. 94-581, title II, Sec. 206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95-62, Sec. 3(3), July 5, 1977, 91 Stat. 262; Pub. L. 98-528, title I, Sec. 105(1), Oct. 19, 1984, 98 Stat. 2689; renumbered Sec. 8132, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 104-262, title III, Sec. 342(b)(2), Oct. 9, 1996, 110 Stat. 3206.)

-MISC1-

AMENDMENTS

1996 - Pub. L. 104-262 inserted "adult day health," before "or hospital care".

1991 - Pub. L. 102-40 renumbered section 5032 of this title as this section.

1984 - Pub. L. 98-528 inserted "(or to acquire facilities to be used as State home facilities) after "State home facilities".

1977 - Pub. L. 95-62 inserted references to the construction of State home facilities for furnishing of domiciliary care and to the expansion, remodeling, and alteration of existing buildings for furnishing domiciliary, nursing home, or hospital care to veterans in State homes.

1976 - Pub. L. 94-581 substituted "veterans" for "war veterans".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

-End-

-CITE-

38 USC Sec. 8133

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

-HEAD-

Sec. 8133. Authorization of appropriations

-STATUTE-

(a) There are hereby authorized to be appropriated such sums as are necessary to carry out this subchapter. Sums appropriated pursuant to this section shall be used for making grants to States which have submitted, and have had approved by the Secretary, applications for carrying out the purposes and meeting the requirements of this subchapter.

(b) Sums appropriated pursuant to subsection (a) of this section shall remain available until expended.

-SOURCE-

(Added Pub. L. 88-450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 501, Sec. 5033; amended Pub. L. 89-311, Sec. 7(a), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 90-432, Sec. 2, July 26, 1968, 82 Stat. 448; Pub. L. 93-82, title IV, Sec. 403(c), Aug. 2, 1973, 87 Stat. 196; Pub. L. 95-62, Sec. 3(4), July 5, 1977, 91 Stat. 262; Pub. L. 96-151, title I, Sec. 101(a), Dec. 20, 1979, 93 Stat. 1092; Pub. L. 97-251, Sec. 8, Sept. 8, 1982, 96 Stat. 716; Pub. L. 99-576, title II, Sec. 224(a), Oct. 28, 1986, 100 Stat. 3262; Pub. L. 101-110, Sec. 1(c), Oct. 6, 1989, 103 Stat. 682; Pub. L. 101-237, title II, Sec. 201(b), Dec. 18, 1989, 103 Stat. 2066; renumbered Sec. 8133, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title IV, Sec. 402, Nov. 4, 1992, 106 Stat. 4954.)

-MISC1-

AMENDMENTS

1992 - Subsec. (a). Pub. L. 102-585 struck out before period at end of first sentence "through September 30, 1992".

1991 - Pub. L. 102-40 renumbered section 5033 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Secretary" for "Administrator".

1989 - Subsec. (a). Pub. L. 101-237 substituted "September 30, 1992" for "September 30, 1990".

Pub. L. 101-110 substituted "1990" for "1989".

1986 - Subsec. (a). Pub. L. 99-576 amended first sentence generally. Prior to amendment, first sentence read as follows: "There is hereby authorized to be appropriated \$15,000,000 for fiscal year 1980 and such sums as may be necessary for fiscal year 1981 and for each of the five succeeding fiscal years."

1982 - Subsec. (a). Pub. L. 97-251 substituted "for fiscal year 1980 and such sums as may be necessary for fiscal year 1981 and for each of the five succeeding fiscal years" for "for the fiscal year ending September 30, 1978, a like sum for each of the two succeeding fiscal years, and such sums as may be necessary for the fiscal years ending September 30, 1981, and September 30, 1982".

1979 - Subsec. (a). Pub. L. 96-151 inserted provisions extending authorization of a like sum from one to two years, and provisions authorizing to be appropriated such sums as necessary for the fiscal years ending Sept. 30, 1981, and Sept. 30, 1982.

1977 - Subsec. (a). Pub. L. 95-62 substituted "\$15,000,000 for the fiscal year ending September 30, 1978, and a like sum for the succeeding fiscal year" for "\$5,000,000 for the fiscal year ending June 30, 1965, and a like sum for each of the fourteen succeeding fiscal years" and "applications for carrying out the purposes and meeting the requirements of this subchapter" for "applications for carrying out the purposes of section 5032 of this title".

Subsec. (b). Pub. L. 95-62 substituted "shall remain available until expended" for "shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated".

1973 - Subsec. (a). Pub. L. 93-82 substituted "fourteen succeeding fiscal years" for "nine succeeding fiscal years".

1968 - Subsec. (a). Pub. L. 90-432 substituted "nine succeeding fiscal years" for "four succeeding fiscal years".

1965 - Subsec. (c). Pub. L. 89-311 repealed subsec. (c) which limited to not more than 10 per centum of the funds appropriated pursuant to subsec. (a) of this section the moneys which could be used to assist in the construction of nursing home care facilities

in any one State.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(a) of Pub. L. 101-110 provided that: "The provisions of and amendments made by this Act [amending this section and enacting provisions set out as notes under sections 1712, 1720B, and 3729 of this title and under section 6302 of Title 5, Government Organization and Employees] shall take effect as of October 1, 1989."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-576 effective July 1, 1987, see section 224(e) of Pub. L. 99-576, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

-End-

-CITE-

38 USC Sec. 8134

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY,

NURSING HOME, AND HOSPITAL CARE

-HEAD-

Sec. 8134. General regulations

-STATUTE-

(a)(1) The Secretary shall prescribe regulations for the purposes of this subchapter.

(2) In those regulations, the Secretary shall prescribe for each State the number of nursing home and domiciliary beds for which assistance under this subchapter may be furnished. Such regulations shall be based on projected demand for such care 10 years after the date of the enactment of the Veterans Millennium Health Care and Benefits Act by veterans who at such time are 65 years of age or older and who reside in that State. In determining such projected demand, the Secretary shall take into account travel distances for veterans and their families.

(3)(A) In those regulations, the Secretary shall establish criteria under which the Secretary shall determine, with respect to an application for assistance under this subchapter for a project described in subparagraph (B) which is from a State that has a need for additional beds as determined under subsections (a)(2) and (d)(1), whether the need for such beds is most aptly characterized as great, significant, or limited. Such criteria shall take into account the availability of beds already operated by the Secretary and other providers which appropriately serve the needs which the State proposes to meet with its application.

(B) This paragraph applies to a project for the construction or acquisition of a new State home facility, a project to increase the number of beds available at a State home facility, and a project to replace beds at a State home facility.

(4) The Secretary shall review and, as necessary, revise regulations prescribed under paragraphs (2) and (3) not less often than every four years.

(b) The Secretary shall prescribe the following by regulation:

(1) General standards of construction, repair, and equipment for facilities constructed or acquired with assistance received under this subchapter.

(2) General standards for the furnishing of care in facilities which are constructed or acquired with assistance received under this subchapter, which standards shall be no less stringent than those standards prescribed by the Secretary pursuant to section 1720(b) of this title.

(c) The Secretary may inspect any State facility constructed or acquired with assistance received under this subchapter at such times as the Secretary deems necessary to insure that such facility meets the standards prescribed under subsection (b)(2).

(d)(1) In prescribing regulations to carry out this subchapter, the Secretary shall provide that in the case of a State that seeks assistance under this subchapter for a project described in subsection (a)(3)(B), the determination of the unmet need for beds for State homes in that State shall be reduced by the number of beds in all previous applications submitted by that State under this subchapter, including beds which have not been recognized by the Secretary under section 1741 of this title.

(2)(A) Financial assistance under this subchapter for a renovation project may only be provided for a project for which the total cost of construction is in excess of \$400,000 (as adjusted from time-to-time in such regulations to reflect changes in costs of construction).

(B) For purposes of this paragraph, a renovation project is a project to remodel or alter existing buildings for which financial assistance under this subchapter may be provided and does not include maintenance and repair work which is the responsibility of the State.

-SOURCE-

(Added Pub. L. 88-450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 502, Sec. 5034; amended Pub. L. 89-311, Sec. 7(b), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93-82, title IV, Sec. 403(d), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94-581, title I, Sec. 107(b), title II, Sec. 206(b), Oct. 21, 1976, 90 Stat. 2847, 2859; Pub. L. 95-62, Sec. 3(5), (6), July 5, 1977, 91 Stat. 262; Pub. L. 96-330, title IV, Sec. 404, Aug. 26, 1980, 94 Stat. 1052; Pub. L. 98-528, title I, Sec. 105(2), Oct. 19, 1984, 98 Stat. 2689; renumbered Sec. 8134, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, Sec. 14(f)(6), June 13, 1991, 105 Stat. 288; Pub. L. 102-83,

Secs. 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406;
Pub. L. 106-117, title II, Sec. 207(a), Nov. 30, 1999, 113 Stat.
1564.)

-REFTEXT-

REFERENCES IN TEXT

The date of the enactment of the Veterans Millennium Health Care and Benefits Act, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 106-117, which was approved Nov. 30, 1999.

-MISC1-

AMENDMENTS

1999 - Subsecs. (a), (b). Pub. L. 106-117, Sec. 207(a)(1)-(3), added subsec. (a), redesignated former subsec. (a) as (b) and struck out introductory provisions and par. (1) which authorized Secretary to prescribe number of beds needed for adequate nursing home care of veterans, and redesignated former pars. (2) and (3) of subsec. (a) as pars. (1) and (2), respectively, of subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 106-117, Sec. 207(a)(1), (4), redesignated subsec. (b) as (c) and substituted "subsection (b)(2)" for "subsection (a)(3)".

Subsec. (d). Pub. L. 106-117, Sec. 207(a)(5), added subsec. (d).

1991 - Pub. L. 102-40 renumbered section 5034 of this title as this section.

Pub. L. 102-83, Sec. 5(c)(1), substituted "1720(b)" for "620(b)" in subsec. (a)(3).

Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by inserting "(a)" before "Within six months", substituting "any amendment to this section" for "this section or any amendment to it", designating sentence at end of par. (3) as subsec. (b), realigning such sentence, and substituting "the standards prescribed under subsection (a)(3)" for "such standards" at end of such sentence.

1984 - Pars. (2), (3). Pub. L. 98-528 inserted "or acquired" after "constructed" wherever appearing.

1980 - Par. (1). Pub. L. 96-330 struck out ", which number shall not exceed two and one-half beds per thousand veteran population in the case of any State" after "residing in each State".

1977 - Par. (2). Pub. L. 95-62, Sec. 3(5), substituted "repair, and equipment for facilities constructed" for "repairs, modernization, alteration, and equipment for facilities for furnishing nursing home care which are constructed".

Par. (3). Pub. L. 95-62, Sec. 3(6), substituted "furnishing of care" for "furnishing of nursing home care".

1976 - Pub. L. 94-581 substituted "date of enactment of this section or any amendment to it with respect to such amendment" for "date of enactment of this subchapter" in provisions preceding par. (1), substituted "veterans" and "veteran" for "war veterans" and "war veteran", respectively, in par. (1), and added par. (3).

1973 - Par. (1). Pub. L. 93-82 substituted "two and one-half beds" for "one and one-half beds".

1965 - Par. (1). Pub. L. 89-311 substituted "one and one-half beds" for "one-half bed".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of

grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

REGULATIONS

Pub. L. 106-117, title II, Sec. 207(d), Nov. 30, 1999, 113 Stat. 1567, provided that: "The Secretary [of Veterans Affairs] shall prescribe the initial regulations under subsection (a) of section 8134 of title 38, United States Code, as added by subsection (a), not later than April 30, 2000."

TRANSITION PROVISIONS

Provisions of this section in effect on Nov. 10, 1999, to continue in effect after that date with respect to certain applications described in section 8135(b)(2)(A) of this title that are identified in section 207(c)(2) of Pub. L. 106-117, see section 207(c) of Pub. L. 106-117, set out as a note under section 8135 of this title.

-End-

-CITE-

38 USC Sec. 8135

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

-HEAD-

Sec. 8135. Applications with respect to projects; payments

-STATUTE-

(a) Any State desiring to receive assistance for a project for construction of State home facilities (or acquisition of a facility to be used as a State home facility) must submit to the Secretary an application. Such application shall set forth the following:

(1) The amount of the grant requested with respect to such project which may not exceed 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of such project.

(2) A description of the site for such project.

(3) Plans and specifications for such project in accordance with regulations prescribed by the Secretary pursuant to section 8134(a)(2) of this title.

(4) Reasonable assurance that upon completion of such project the facilities will be used principally to furnish to veterans the level of care for which such application is made and that not more than 25 percent of the bed occupancy at any one time will consist of patients who are not receiving such level of care as veterans.

(5) Reasonable assurance that title to such site is or will be vested solely in the applicant, a State home, or another agency or instrumentality of the State.

(6) Reasonable assurance that adequate financial support will be available for the construction of the project (or for facility acquisition and construction of the project) by July 1 of the fiscal year for which the application is approved and for its maintenance and operation when complete.

(7) Reasonable assurance that the State will make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and give the Secretary, upon demand, access to the records upon which such information is based.

(8) Reasonable assurance that the rates of pay for laborers and mechanics engaged in construction of the project will be not less than the prevailing local wage rates for similar work as determined in accordance with sections 3141-3144, 3146, and 3147 of title 40.

(9) In the case of a project for acquisition of a facility, reasonable assurance that the estimated total cost of acquisition of the facility and of any expansion, remodeling, and alteration of the acquired facility will not be greater than the estimated cost of construction of an equivalent new facility.

(b)(1) Any State seeking to receive assistance under this subchapter for a project that would involve construction or acquisition of either nursing home or domiciliary facilities shall include with its application under subsection (a) the following:

(A) Documentation (i) that the site for the project is in reasonable proximity to a sufficient concentration and population of veterans who are 65 years of age and older, and (ii) that there is a reasonable basis to conclude that the facilities when complete will be fully occupied.

(B) A financial plan for the first three years of operation of such facilities.

(C) A five-year capital plan for the State home program for that State.

(2) Failure to provide adequate documentation under paragraph (1)(A) or to provide an adequate financial plan under paragraph (1)(B) shall be a basis for disapproving the application.

(c)(1) Upon receipt of an application under subsection (a) for financial assistance under this subchapter, the Secretary -

(A) shall determine whether the application meets the requirements of this section and of the regulations prescribed under section 8134 of this title;

(B) shall notify the State submitting the application whether the application conforms with those requirements and, if it does not, of the actions necessary to bring the application into conformance with those requirements; and

(C) shall determine the priority of the project described in the application in accordance with the provisions of this

subsection.

(2) Subject to paragraphs (3) and (5)(C) of this subsection, the Secretary shall accord priority to applications in the following order:

(A) An application from a State that has made sufficient funds available for the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State to make such funds available for such purpose.

(B) An application from a State for a project at an existing facility to remedy a condition or conditions that have been cited by an accrediting institution, by the Secretary, or by a local licensing or approving body of the State as being threatening to the lives or safety of the patients in the facility.

(C) An application from a State that has not previously applied for award of a grant under this subchapter for construction or acquisition of a State nursing home.

(D) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a great need for the beds to be established at such home or facility.

(E) An application from a State for renovations to a State home facility other than renovations described in subparagraph (B).

(F) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a significant need for the beds to be established at such home or facility.

(G) An application that meets other criteria as the Secretary determines appropriate and has established in regulations.

(H) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a limited need for the beds to be established at such home or facility.

(3) In according priorities to projects under paragraph (2) of this subsection, the Secretary -

(A) may not accord any priority to a project for the construction or acquisition of a hospital; and

(B) may not accord any priority to a project which would expand a State's capacity to furnish hospital care in a State home.

(4) The Secretary shall establish a list of approved projects (including projects that have been conditionally approved under paragraph (6) of this subsection), in the order of their priority, as of August 15 of each year. The Secretary shall award grants in the order of their priority on the list during the fiscal year beginning on October 1 of the calendar year in which the list was made.

(5)(A) The Secretary shall defer approval of an application that otherwise meets the requirements of this section if the State submitting the application does not, by the July 1 deadline (as defined in subparagraph (D) of this paragraph), demonstrate to the satisfaction of the Secretary that the State has provided adequate financial support for construction of the project.

(B) In a case in which approval of an application is deferred under subparagraph (A) of this paragraph, the Secretary shall select for award of a grant or grants under this subsection an application or applications which would not have been approved

during the fiscal year but for the deferral and to which the Secretary accords the highest priority under paragraph (2) of this subsection.

(C) An application deferred in accordance with the requirements of this paragraph shall be accorded priority in any subsequent fiscal year ahead of applications that had not been approved before the first day of the fiscal year in which the deferred application was first approved.

(D) For the purposes of this paragraph, the term "July 1 deadline" means July 1 of the fiscal year in which the State is notified by the Secretary of the availability of funding for a grant for such project.

(6)(A) The Secretary may conditionally approve a project under this section, conditionally award a grant for the project, and obligate funds for the grant if the Secretary determines that the application for the grant is sufficiently complete to warrant awarding the grant and that, based on assurances provided by the State submitting the application, the State will complete the application and meet all the requirements referred to in paragraph (1)(A) of this subsection by the date, not later than 180 days after the date of the conditional approval, specified by the Secretary.

(B) If a State does not complete the application and meet all the requirements referred to in such paragraph by the date specified by the Secretary under subparagraph (A) of this paragraph, the Secretary shall rescind the conditional approval and award under such subparagraph and deobligate the funds previously obligated in connection with the application. In the event the Secretary rescinds conditional approval of a project under this subparagraph, the Secretary may not further obligate funds for the project during the fiscal year in which the Secretary rescinds such approval.

(7)(A) Subject to subparagraph (B) of this paragraph, the Secretary may increase the amount of any grant awarded to any State for a project under this section by an amount by which the Secretary determines that the estimated cost of the construction or acquisition has increased from the estimated cost on which the Secretary based the determination to award the grant, without regard to the position of such project on the list established under paragraph (4) of this subsection, if the Secretary determines that the grant was awarded before the State entered into a contract for the construction or acquisition provided for in such project.

(B) A grant may not be increased under subparagraph (A) of this paragraph by more than 10 percent of the amount of the grant initially awarded for such project, and the amount of such grant, as increased, may not exceed 65 percent of the cost of the project.

(d) No application submitted to the Secretary under this section shall be disapproved until the Secretary has afforded the applicant notice and an opportunity for a hearing.

(e) The amount of a grant under this subchapter shall be paid to the applicant or, if designated by the applicant, the State home for which such project is being carried out or any other agency or instrumentality of the applicant. Such amount shall be paid, in advance or by way of reimbursement, and in such installments consistent with the progress of the project as the Secretary may determine and certify for payment to the Secretary of the Treasury. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved.

(f) Any amendment of any application, whether or not approved, shall be subject to approval in the same manner as an original application.

-SOURCE-

(Added Pub. L. 88-450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 502, Sec. 5035; amended Pub. L. 89-311, Sec. 7(a), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93-82, title IV, Sec. 403(e), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94-581, title II, Secs. 206(b), 210(e)(10), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 95-62, Sec. 3(7)-(12), July 5, 1977, 91 Stat. 262, 263; Pub. L. 97-295, Sec. 4(92), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-528, title I, Sec. 105(3), Oct. 19, 1984, 98 Stat. 2689; Pub. L. 99-166, title II, Sec. 205, Dec. 3, 1985, 99 Stat. 953; Pub. L. 99-576, title II, Sec. 224(b), (c), Oct. 28, 1986, 100 Stat. 3262, 3263; Pub. L. 100-322, title II, Sec. 206, May 20, 1988, 102 Stat. 513; renumbered Sec. 8135 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, Sec. 14(f)(7), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title IV, Secs. 403(a), 404(a), Nov. 4, 1992, 106 Stat. 4954; Pub. L. 103-446, title XII, Sec. 1201(d)(18), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104-262, title III, Sec. 342(b)(3), Oct. 9, 1996, 110 Stat. 3206; Pub. L. 106-117, title II, Sec. 207(b), Nov. 30, 1999, 113 Stat. 1565; Pub. L. 107-217, Sec. 3(j)(4), Aug. 21, 2002, 116 Stat. 1300.)

-MISC1-

AMENDMENTS

2002 - Subsec. (a)(8). Pub. L. 107-217 substituted "sections 3141-3144, 3146, and 3147 of title 40" for "the Act of March 3, 1931 (40 U.S.C. 276a - 276a-5) (known as the Davis-Bacon Act)".

1999 - Subsec. (a). Pub. L. 106-117, Sec. 207(b)(1), in introductory provisions, substituted "set forth the following:" for "set forth - ", in pars. (1) to (7), capitalized the first letter of the first word and substituted a period for the comma at the end, in par. (8), capitalized the first letter of the first word and substituted a period for ", and" at the end, and in par. (9), capitalized the first letter of the first word.

Subsec. (b). Pub. L. 106-117, Sec. 207(b)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 106-117, Sec. 207(b)(2), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 106-117, Sec. 207(b)(4)(A), in introductory provisions, substituted "under subsection (a) for financial assistance under this subchapter" for "for a grant under subsection (a) of this section".

Subsec. (c)(2)(A). Pub. L. 106-117, Sec. 207(b)(4)(B)(i), struck out "the construction or acquisition of" after "sufficient funds available for".

Subsec. (c)(2)(B) to (H). Pub. L. 106-117, Sec. 207(b)(4)(B)(ii), added subpars. (B) to (H) and struck out former subpars. (B) to (D) which read as follows:

"(B) An application from a State that does not have a State home facility constructed or acquired with assistance under this subchapter (or for which such a grant has been made).

"(C) An application from a State which the Secretary determines, in accordance with criteria and procedures specified in regulations which the Secretary shall prescribe, has a greater need for nursing home or domiciliary beds or adult day health care facilities than other States from which applications are received.

"(D) An application that meets such other criteria as the Secretary determines are appropriate and has established in regulations."

Subsec. (c)(3)(A). Pub. L. 106-117, Sec. 207(b)(4)(C), added

subpar. (A) and struck out former subpar. (A) which read as follows: "shall accord priority only to projects which would involve construction or acquisition of either nursing home or domiciliary buildings or construction (other than new construction) of adult day health care buildings; and".

Subsecs. (d) to (f). Pub. L. 106-117, Sec. 207(b)(2), redesignated subsecs. (c) to (e) as (d) to (f), respectively.

1996 - Subsec. (b)(2)(C). Pub. L. 104-262, Sec. 342(b)(3)(A), inserted "or adult day health care facilities" after "domiciliary beds".

Subsec. (b)(3)(A). Pub. L. 104-262, Sec. 342(b)(3)(B), inserted "or construction (other than new construction) of adult day health care buildings" before semicolon.

1994 - Subsec. (a)(3). Pub. L. 103-446 substituted "section 8134(a)(2)" for "section 8134(2)".

1992 - Subsec. (b)(6)(A). Pub. L. 102-585, Sec. 403(a), substituted "180 days" for "90 days".

Subsec. (b)(6)(B). Pub. L. 102-585, Sec. 404(a), inserted at end "In the event the Secretary rescinds conditional approval of a project under this subparagraph, the Secretary may not further obligate funds for the project during the fiscal year in which the Secretary rescinds such approval."

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5035 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "Any State" for "After regulations have been prescribed by the Administrator under section 5034 of this title, any State".

Pub. L. 102-40, Sec. 402(d)(1), substituted "8134(2)" for "5034(2)" in par. (3).

Subsec. (b). Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (b)(1)(A). Pub. L. 102-40, Sec. 402(d)(1), substituted "8134" for "5034".

Subsecs. (c), (d). Pub. L. 102-83 substituted "Secretary" for "Administrator" wherever appearing.

1988 - Subsec. (b)(4). Pub. L. 100-322, Sec. 206(a), (b)(1), inserted "(including projects that have been conditionally approved under paragraph (6) of this subsection)" after "projects" and substituted "August 15" for "July 1".

Subsec. (b)(6), (7). Pub. L. 100-322, Sec. 206(b)(2), added pars. (6) and (7).

1986 - Subsec. (b). Pub. L. 99-576, Sec. 224(b), amended subsec. (b) generally, substituting provisions consisting of pars. (1) to (5) for former provisions consisting of pars. (1) and (2).

Subsec. (d). Pub. L. 99-576, Sec. 224(c), struck out par. (1) designation, substituted "The amount of a grant under this subchapter shall be paid" for "Upon approving an application under this section, the Administrator shall certify to the Secretary of the Treasury the amount of the grant so approved, but in no event an amount greater than 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of the project, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment" and struck out par. (2) which read as follows: "No one State may receive in any fiscal year in the aggregate under this subchapter more than one-third of the amount appropriated for carrying out this subchapter in such fiscal year."

1985 - Subsec. (a)(6). Pub. L. 99-166, Sec. 205(a), inserted "by

July 1 of the fiscal year for which the application is approved".

Subsec. (b). Pub. L. 99-166, Sec. 205(b), designated existing provisions as par. (1), redesignated cls. (1) to (4) as (A) to (D), respectively, and added par. (2).

1984 - Subsec. (a). Pub. L. 98-528, Sec. 105(3)(A), inserted "(or acquisition of a facility to be used as a State home facility)" after "State home facilities" in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-528, Sec. 105(3)(B), inserted "(or of the estimated cost of facility acquisition and construction)" after "cost of construction".

Subsec. (a)(6). Pub. L. 98-528, Sec. 105(3)(C), inserted "(or for facility acquisition and construction of the project)" after "construction of the project".

Subsec. (a)(8). Pub. L. 98-528, Sec. 105(3)(D), substituted "the Act of March 3, 1931 (40 U.S.C. 276a - 276a-5)" for "sections 276a through 276a-5 of title 40".

Subsec. (a)(9). Pub. L. 98-528, Sec. 105(3)(E), added par. (9).

Subsec. (b)(2). Pub. L. 98-528, Sec. 105(3)(F), inserted "(or of the estimated cost of facility acquisition and construction)" after "cost of construction".

Subsec. (b)(4). Pub. L. 98-528, Sec. 105(3)(G), substituted "the carrying out of such project" for "the construction of such project".

Subsec. (d)(1). Pub. L. 98-528, Sec. 105(3)(H), inserted "(or of the estimated cost of facility acquisition and construction)" after "cost of construction" in first sentence, substituted "carried out" for "constructed" in second sentence, substituted "the project" for "construction" in third sentence, struck out "the construction of" before "an approved project" in fourth sentence.

1982 - Subsecs. (a)(1), (4), (b)(2), (d)(1). Pub. L. 97-295 substituted "percent" for "per centum" wherever appearing.

1977 - Subsec. (a). Pub. L. 95-62, Sec. 3(7), (8), substituted "State home facilities must submit" for "State home facilities for furnishing nursing home care must submit" in provisions preceding par. (1) and, "to furnish to veterans the level of care for which such application is made and that not more than 25 per centum of the bed occupancy at any one time will consist of patients who are not receiving such level of care as war veterans" for "to furnish nursing home care to veterans and that not more than 10 per centum of the bed occupancy at any one time will consist of patients who are not receiving nursing home care as veterans" in par. (4).

Subsec. (b)(3). Pub. L. 95-62, Sec. 3(9), substituted "reasonable assurances under subsection (a) of this section as the Administrator" for "reasonable assurances as to use, title, financial support, reports and access to records, and payment of prevailing rates of wages, as the Administrator".

Subsec. (c). Pub. L. 95-62, Sec. 3(10), substituted "afforded the applicant notice and an opportunity for a hearing" for "afforded the applicant an opportunity for a hearing".

Subsec. (d). Pub. L. 95-62, Sec. 3(11), designated existing provisions as par. (1), substituted "the Administrator shall certify to the Secretary of the Treasury the amount of the grant so approved" for "the Administrator shall certify to the Secretary of the Treasury the amount of the grant requested with respect to such project in such application", and added par. (2).

Subsec. (e). Pub. L. 95-62, Sec. 3(12), substituted "amendment of any application, whether or not approved," for "amendment of any approved application".

1976 - Subsec. (a)(4). Pub. L. 94-581, Sec. 206(b), substituted "veterans" for "war veterans" in two places.

Subsec. (b). Pub. L. 94-581, Secs. 206(b), 210(e)(10),

substituted "the Administrator" for "he" in provisions preceding par. (1) and "veterans" for "war veterans" in par. (4).

1973 - Subsecs. (a)(1), (b)(2), (d). Pub. L. 93-82 substituted "65 per centum" for "50 per centum".

1965 - Subsec. (b). Pub. L. 89-311 repealed par. (3) which placed a limit of 10 per centum of the funds appropriated for any fiscal year pursuant to section 5033(a) of this title upon the amount which could be used to assist in the construction of facilities in any one state, and redesignated pars. (4) and (5) as pars. (3) and (4), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 403(b) of Pub. L. 102-585 provided that: "The amendment made by subsection (a) [amending this section] shall apply to projects that are conditionally approved after September 30, 1992."

Section 404(b) of Pub. L. 102-585 provided that: "The amendment made by subsection (a) [amending this section] shall apply to rescissions of conditional approval of projects after the date of the enactment of this Act [Nov. 4, 1992]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-576 effective July 1, 1987, see section 224(e) of Pub. L. 99-576, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

REGULATIONS

Section 224(f) of Pub. L. 99-576 provided that: "The Administrator of Veterans' Affairs shall prescribe regulations not later than April 1, 1987, to implement the amendments made by this section [amending this section and sections 5031 and 5033 [now 8131 and 8133] of this title]."

TRANSITION PROVISIONS

Pub. L. 106-117, title II, Sec. 207(c), Nov. 30, 1999, 113 Stat. 1566, provided that:

"(1) The provisions of sections 8134 and 8135 of title 38, United States Code, as in effect on November 10, 1999, shall continue in effect after that date with respect to applications described in section 8135(b)(2)(A) of such title, as in effect on that date, that are identified in paragraph (2) (and to projects and grants pursuant to those applications). The Secretary [of Veterans

Affairs] shall accord priority among those applications in the order listed in paragraph (2).

"(2) Applications covered by paragraph (1) are the following:

"(A) Any application for a fiscal year 1999 priority one project.

"(B) Any application for a fiscal year 2000 priority one project that was submitted by a State that (i) did not receive grant funds from amounts appropriated for fiscal year 1999 under the State home grant program, and (ii) does not have any fiscal year 1999 priority one projects.

"(3) For purposes of this subsection -

"(A) the term 'fiscal year 1999 priority one project' means a project on the list of approved projects established by the Secretary on October 29, 1998, under section 8135(b)(4) of title 38, United States Code, as in effect on that date that (pursuant to section 8135(b)(2)(A) of that title) is in the grouping of projects on that list designated as Priority Group 1;

"(B) the term 'fiscal year 2000 priority one project' means a project on the list of approved projects established by the Secretary on November 3, 1999, under section 8135(b)(4) of title 38, United States Code, as in effect on that date that (pursuant to section 8135(b)(2)(A) of that title) is in the grouping of projects on that list designated as Priority Group 1; and

"(C) the term 'State home grant program' means the grant program under subchapter III of chapter 81 of title 38, United States Code."

-End-

-CITE-

38 USC Sec. 8136

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

-HEAD-

Sec. 8136. Recapture provisions

-STATUTE-

(a) If, within the 20-year period beginning on the date of the approval by the Secretary of the final architectural and engineering inspection of any project with respect to which a grant has been made under this subchapter (except that the Secretary, pursuant to regulations which the Secretary shall prescribe, may at the time of such grant provide for a shorter period than 20, but not less than seven, years, based on the magnitude of the project and the grant amount involved, in the case of the acquisition, expansion, remodeling, or alteration of existing facilities), the facilities covered by the project cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home, or hospital care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant under this

subchapter, or from the then owner of such facilities, 65 percent of the then value of such project (but in no event an amount greater than the amount of assistance provided under this subchapter), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which such facilities are situated.

(b) The establishment and operation by the Secretary of an outpatient clinic in facilities described in subsection (a) shall not constitute grounds entitling the United States to any recovery under that subsection.

-SOURCE-

(Added Pub. L. 88-450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 503, Sec. 5036; amended Pub. L. 93-82, title IV, Sec. 403(f), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94-581, title II, Sec. 206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95-62, Sec. 3(13), July 5, 1977, 91 Stat. 263; Pub. L. 97-295, Sec. 4(92), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-528, title I, Sec. 105(4), Oct. 19, 1984, 98 Stat. 2690; renumbered Sec. 8136, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title IV, Sec. 405, Nov. 4, 1992, 106 Stat. 4954; Pub. L. 106-419, title II, Sec. 222, Nov. 1, 2000, 114 Stat. 1845.)

-MISC1-

AMENDMENTS

2000 - Pub. L. 106-419 designated existing provisions as subsec. (a) and added subsec. (b).

1992 - Pub. L. 102-585 substituted "If, within the 20-year period beginning on the date of the approval by the Secretary of the final architectural and engineering inspection of any project" for "If, within 20 years after completion of any project" and "the facilities covered by the project cease" for "such facilities cease".

1991 - Pub. L. 102-40 renumbered section 5036 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" in two places.

1984 - Pub. L. 98-528 struck out "for construction" after "completion of any project"; inserted "acquisition," after "in the case of the"; substituted "value of such project" for "value of such construction"; struck out "for such construction" after "assistance provided for", which amendment was executed by striking out "for such construction" after "assistance provided" as the probable intent of Congress, because "for" appeared only once after "assistance provided"; and substituted "20" for "twenty" in two places.

1982 - Pub. L. 97-295 substituted "percent" for "per centum".

1977 - Pub. L. 95-62 substituted "If, within twenty years after completion of any project for construction with respect to which a grant has been made under this subchapter (except that the Administrator, pursuant to regulations which the Administrator shall prescribe, may at the time of such grant provide for a shorter period than twenty, but not less than seven, years, based on the magnitude of the project and the grant amount involved, in the case of the expansion, remodeling, or alteration of existing facilities), such facilities cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home, or hospital care to veterans, the United States shall be entitled to recover from the

State which was the recipient of the grant under this subchapter, or from the then owner of such facilities, 65 per centum of the then value of such construction (but in no event an amount greater than the amount of assistance provided for such construction under this subchapter)" for "If, within twenty years after completion of any project for construction of facilities for furnishing nursing home care with respect to which a grant has been made under this subchapter, such facilities cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing nursing home care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant under this subchapter, or from the then owner of such facilities, 65 per centum of the then value of such facilities".

1976 - Pub. L. 94-581 substituted "veterans" for "war veterans".

1973 - Pub. L. 93-82 substituted "65 per centum" for "50 per centum".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

-End-

-CITE-

38 USC Sec. 8137

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY,

NURSING HOME, AND HOSPITAL CARE

-HEAD-

Sec. 8137. State control of operations

-STATUTE-

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any

State home for which facilities are constructed or acquired with assistance received under this subchapter.

-SOURCE-

(Added Pub. L. 88-450, Sec. 4(a), Aug. 19, 1964, 78 Stat. 503, Sec. 5037; amended Pub. L. 98-528, title I, Sec. 105(5), Oct. 19, 1984, 98 Stat. 2690; renumbered Sec. 8137, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5037 of this title as this section.

1984 - Pub. L. 98-528 inserted "or acquired" after "constructed".

-End-

-CITE-

38 USC Sec. 8138

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER III - STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

-HEAD-

Sec. 8138. Treatment of certain health facilities as State homes

-STATUTE-

(a) The Secretary may treat a health facility (or certain beds in a health facility) as a State home for purposes of subchapter V of chapter 17 of this title if the following requirements are met:

(1) The facility (or certain beds in such facility) meets the standards for the provision of nursing home care that are applicable to State homes, as prescribed by the Secretary under section 8134(b) of this title, and such other standards relating to the facility (or certain beds in such facility) as the Secretary may require.

(2) The facility (or certain beds in such facility) is licensed or certified by the appropriate State and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting State home facilities.

(3) The State demonstrates in an application to the Secretary that, but for the treatment of a facility (or certain beds in such facility), as a State home under this subsection, a substantial number of veterans residing in the geographic area in which the facility is located who require nursing home care will not have access to such care.

(4) The Secretary determines that the treatment of the facility (or certain beds in such facility) as a State home best meets the needs of veterans for nursing home care in the geographic area in which the facility is located.

(5) The Secretary approves the application submitted by the State with respect to the facility (or certain beds in such

facility).

(b) The Secretary may not treat a health facility (or certain beds in a health facility) as a State home under subsection (a) if the Secretary determines that such treatment would increase the number of beds allocated to the State in excess of the limit on the number of beds provided for by regulations prescribed under section 8134(a) of this title.

(c) The number of beds occupied by veterans in a health facility for which payment may be made under subchapter V of chapter 17 of this title by reason of subsection (a) shall not exceed -

(1) 100 beds in the aggregate for all States; and

(2) in the case of any State, the difference between -

(A) the number of veterans authorized to be in beds in State homes in such State under regulations prescribed under section 8134(a) of this title; and

(B) the number of veterans actually in beds in State homes (other than facilities or certain beds treated as State homes under subsection (a)) in such State under regulations prescribed under such section.

(d) The number of beds in a health facility in a State that has been treated as a State home under subsection (a) shall be taken into account in determining the unmet need for beds for State homes for the State under section 8134(d)(1) of this title.

(e) The Secretary may not treat any new health facilities (or any new certain beds in a health facility) as a State home under subsection (a) after September 30, 2009.

-SOURCE-

(Added Pub. L. 109-461, title II, Sec. 211(c)(1), Dec. 22, 2006,
120 Stat. 3420.)

-End-

-CITE-

38 USC SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES,
EQUIPMENT, AND INFORMATION 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
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SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND
INFORMATION

-End-

-CITE-

38 USC Sec. 8151 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND
INFORMATION

-HEAD-

Sec. 8151. Statement of congressional purpose

-STATUTE-

It is the purpose of this subchapter to strengthen the medical programs at Department facilities and improve the quality of health care provided veterans under this title by authorizing the Secretary to enter into agreements with health-care providers in order to share health-care resources with, and receive health-care resources from, such providers while ensuring no diminution of services to veterans.

-SOURCE-

(Added Pub. L. 89-785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1373, Sec. 5051; amended Pub. L. 101-366, title II, Sec. 202(a), Aug. 15, 1990, 104 Stat. 438; renumbered Sec. 8151, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-210, Sec. 3(a), Dec. 20, 1993, 107 Stat. 2497; Pub. L. 104-262, title III, Sec. 301(a), Oct. 9, 1996, 110 Stat. 3191.)

-MISC1-

AMENDMENTS

1996 - Pub. L. 104-262 amended section generally. Prior to amendment, section read as follows: "It is the purpose of this subchapter to improve the quality of hospital care and other medical service provided veterans under this title, by authorizing the Secretary to enter into agreements with medical schools, health-care facilities, and research centers throughout the country in order to receive from and share with such medical schools, health-care facilities, and research centers the most advanced medical techniques and information, as well as certain specialized medical resources which otherwise might not be feasibly available or to effectively utilize other medical resources with the surrounding medical community, without diminution of services to veterans. Among other things, it is intended, by these means, to strengthen the medical programs at those Department hospitals which are located in small cities or rural areas and thus are remote from major medical centers. It is further the purpose of this subchapter to improve the provision of care to veterans under this title by authorizing the Secretary to enter into agreements with State veterans facilities for the sharing of health-care resources."

1993 - Pub. L. 103-210 inserted at end "It is further the purpose of this subchapter to improve the provision of care to veterans under this title by authorizing the Secretary to enter into agreements with State veterans facilities for the sharing of health-care resources."

1991 - Pub. L. 102-40 renumbered section 5051 of this title as this section.

Pub. L. 102-83 substituted "Secretary" for "Administrator" and "Department" for "Veterans' Administration".

1990 - Pub. L. 101-366 substituted "health-care facilities," for "hospitals," in two places.

-End-

-CITE-

38 USC Sec. 8152

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

-HEAD-

Sec. 8152. Definitions

-STATUTE-

For the purposes of this subchapter -

(1) The term "health-care resource" includes hospital care and medical services (as those terms are defined in section 1701 of this title), services under sections 1782 and 1783 of this title, any other health-care service, and any health-care support or administrative resource.

(2) The term "health-care providers" includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

(3) The term "hospital", unless otherwise specified, includes any Federal, State, local, or other public or private hospital.

-SOURCE-

(Added Pub. L. 89-785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1373, Sec. 5052; renumbered Sec. 8152, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-54, Sec. 14(f)(8), June 13, 1991, 105 Stat. 288; Pub. L. 103-210, Sec. 3(b), Dec. 20, 1993, 107 Stat. 2497; Pub. L. 104-262, title III, Sec. 301(b), Oct. 9, 1996, 110 Stat. 3191; Pub. L. 107-135, title II, Sec. 208(e)(8), Jan. 23, 2002, 115 Stat. 2464.)

-MISC1-

AMENDMENTS

2002 - Par. (1). Pub. L. 107-135 inserted "services under sections 1782 and 1783 of this title," after "of this title),".

1996 - Pub. L. 104-262 added pars. (1) and (2), redesignated par. (4) as (3), and struck out former pars. (1) to (3) which read as follows:

"(1) The term 'research center' means an institution (or part of an institution), the primary function of which is research, training of specialists, and demonstrations and which, in connection therewith, provides specialized, high quality diagnostic and treatment services for inpatients and outpatients.

"(2) The term 'specialized medical resources' means medical resources (whether equipment, space, or personnel) which, because of cost, limited availability, or unusual nature, are either unique in the medical community or are subject to maximum utilization only

through mutual use.

"(3) The term 'health-care resource' includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, any other health-care service, and any health-care support or administrative resource."

1993 - Pars. (3), (4). Pub. L. 103-210 added par. (3) and redesignated former par. (3) as (4).

1991 - Pub. L. 102-40 renumbered section 5052 of this title as this section.

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by redesignating pars. (a), (b), and (c) as pars. (1), (2), and (3), respectively, and by realigning the margins.

-End-

-CITE-

38 USC Sec. 8153

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND

INFORMATION

-HEAD-

Sec. 8153. Sharing of health-care resources

-STATUTE-

(a)(1) To secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the Secretary may, when the Secretary determines it to be in the best interest of the prevailing standards of the Department medical care program, make arrangements, by contract or other form of agreement for the mutual use, or exchange of use, of health-care resources between Department health-care facilities and any health-care provider, or other entity or individual.

(2) The Secretary may enter into a contract or other agreement under paragraph (1) if such resources are not, or would not be, used to their maximum effective capacity.

(3)(A) If the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of this title, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers, the Secretary may make arrangements for acquisition of the resource without regard to any law or regulation (including any Executive order, circular, or other administrative policy) that would otherwise require the use of competitive procedures for acquiring the resource.

(B)(i) If the health-care resource required is a commercial service or the use of medical equipment or space, and is not to be acquired from an entity described in subparagraph (A), any

procurement of the resource may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring the resource, but only if the procurement is conducted in accordance with the simplified procedures prescribed pursuant to clause (ii).

(ii) The Secretary, in consultation with the Administrator for Federal Procurement Policy, may prescribe simplified procedures for the procurement of health-care resources under this subparagraph. The Secretary shall publish such procedures for public comment in accordance with section 1707 of title 41. Such procedures shall permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.

(iii) Pending publication of the procedures under clause (ii), the Secretary shall (except as provided under subparagraph (A)) procure health-care resources referred to in clause (i) in accordance with all procurement laws and regulations.

(C) Any procurement of health-care resources other than those covered by subparagraph (A) or (B) shall be conducted in accordance with all procurement laws and regulations.

(D) For any procurement to be conducted on a sole source basis other than a procurement covered by subparagraph (A), a written justification shall be prepared that includes the information and is approved at the levels prescribed in section 3304(e) of title 41.

(E) As used in this paragraph, the term "commercial service" means a service that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

(b) Arrangements entered into under this section shall provide for payment to the Department in accordance with procedures that provide appropriate flexibility to negotiate payment which is in the best interest of the Government. Any proceeds to the Government received therefrom shall be credited to the applicable Department medical appropriation and to funds that have been allotted to the facility that furnished the resource involved.

(c) Eligibility for hospital care and medical services furnished any veteran pursuant to this section shall be subject to the same terms as though provided in a Department health care facility, and provisions of this title applicable to persons receiving hospital care or medical services in a Department health care facility shall apply to veterans treated under this section.

(d) When a Department health care facility provides hospital care or medical services, pursuant to a contract or agreement authorized by this section, to an individual who is not eligible for such care or services under chapter 17 of this title and who is entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), such benefits shall be paid, notwithstanding any condition, limitation, or other provision in that title which would otherwise preclude such payment to such facility for such care or services or, if the contract or agreement so provides, to the community health care facility which is a party to the contract or agreement.

(e) The Secretary may make an arrangement that authorizes the furnishing of services by the Secretary under this section to individuals who are not veterans only if the Secretary determines -

(1) that veterans will receive priority under such an arrangement; and

- (2) that such an arrangement -
 (A) is necessary to maintain an acceptable level and quality of service to veterans at that facility; or
 (B) will result in the improvement of services to eligible veterans at that facility.

(f) Any amount received by the Secretary from a non-Federal entity as payment for services provided by the Secretary during a prior fiscal year under an agreement entered into under this section may be obligated by the Secretary during the fiscal year in which the Secretary receives the payment.

(g) The Secretary shall submit to the Congress not later than February 1 of each year a report on the activities carried out under this section during the preceding fiscal year. Each report shall include -

- (1) an appraisal of the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise; and
(2) recommendations for the improvement or more effective administration of such activities.

-SOURCE-

(Added Pub. L. 89-785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1374, Sec. 5053; amended Pub. L. 91-496, Sec. 4, Oct. 22, 1970, 84 Stat. 1092; Pub. L. 93-82, title III, Sec. 303, Aug. 2, 1973, 87 Stat. 195; Pub. L. 94-581, title I, Sec. 115(a)(1), title II, Secs. 206(c), 210(e)(11), Oct. 21, 1976, 90 Stat. 2852, 2859, 2865; Pub. L. 96-151, title III, Sec. 304, Dec. 20, 1979, 93 Stat. 1096; Pub. L. 97-295, Sec. 4(95)(A), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-160, title VII, Sec. 702(20), Nov. 21, 1983, 97 Stat. 1010; Pub. L. 99-576, title II, Sec. 231(c)(1), Oct. 28, 1986, 100 Stat. 3264; Pub. L. 101-366, title II, Sec. 202(b), Aug. 15, 1990, 104 Stat. 438; renumbered Sec. 8153, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, Sec. 14(f)(9), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(D), (E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103-210, Sec. 3(c), Dec. 20, 1993, 107 Stat. 2498; Pub. L. 104-262, title III, Sec. 301(c), (d)(1), Oct. 9, 1996, 110 Stat. 3191, 3193; Pub. L. 105-114, title IV, Sec. 402(d), (e), Nov. 21, 1997, 111 Stat. 2294; Pub. L. 106-419, title IV, Sec. 404(b)(2), Nov. 1, 2000, 114 Stat. 1866; Pub. L. 108-170, title IV, Sec. 405(d), Dec. 6, 2003, 117 Stat. 2063; Pub. L. 111-350, Sec. 5(j)(8), Jan. 4, 2011, 124 Stat. 3850.)

-REFTEXT-

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (Sec. 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

-MISC1-

AMENDMENTS

2011 - Subsec. (a)(3)(B)(ii). Pub. L. 111-350, Sec. 5(j)(8)(A), substituted "section 1707 of title 41" for "section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b)".

Subsec. (a)(3)(D). Pub. L. 111-350, Sec. 5(j)(8)(B), substituted "section 3304(e) of title 41" for "section 303(f) of the Federal

Property and Administrative Services Act of 1949 (41 U.S.C. 253(f))".

2003 - Subsec. (g). Pub. L. 108-170, in introductory provisions, substituted "not later than February 1 of each year" for "not more than 60 days after the end of each fiscal year" and inserted "during the preceding fiscal year" after "under this section".

2000 - Subsec. (a)(3)(B)(ii). Pub. L. 106-419 amended directory language of Pub. L. 105-114, Sec. 402(e). See 1997 Amendment note below.

1997 - Subsec. (a)(3)(A). Pub. L. 105-114, Sec. 402(d), inserted "(including any Executive order, circular, or other administrative policy)" after "law or regulation".

Subsec. (a)(3)(B)(ii). Pub. L. 105-114, Sec. 402(e), as amended by Pub. L. 106-419, inserted ", as appropriate," after "all responsible sources" in third sentence.

1996 - Pub. L. 104-262, Sec. 301(d)(1), substituted "Sharing of health-care resources" for "Specialized medical resources" in section catchline.

Subsec. (a)(1). Pub. L. 104-262, Sec. 301(c)(1)(A), substituted "health-care resources" for "certain specialized medical resources", "other health-care resources" for "other medical resources", and "of health-care resources between Department health-care facilities and any health-care provider, or other entity or individual" for "of -

"(A) specialized medical resources between Department health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools; and

"(B) health-care resources between Department health-care facilities and State home facilities recognized under section 1742(a) of this title".

Subsec. (a)(2). Pub. L. 104-262, Sec. 301(c)(1)(B), substituted "if such resources are not, or would not be," for "only if (A) such an agreement will obviate the need for a similar resource to be provided in a Department health care facility, or (B) the Department resources which are the subject of the agreement and which have been justified on the basis of veterans' care are not".

Subsec. (a)(3). Pub. L. 104-262, Sec. 301(c)(1)(C), added par. (3).

Subsec. (b). Pub. L. 104-262, Sec. 301(c)(2), substituted "payment to the Department in accordance with procedures that provide appropriate flexibility to negotiate payment which is in the best interest of the Government." for "reciprocal reimbursement based on a methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved."

Subsec. (d). Pub. L. 104-262, Sec. 301(c)(3), substituted "preclude such payment to such facility for such care or services" for "preclude such payment, in accordance with -

"(1) rates prescribed by the Secretary of Health and Human Services, after consultation with the Secretary, and

"(2) procedures jointly prescribed by the two Secretaries to assure reasonable quality of care and services and efficient and economical utilization of resources, to such facility therefor".

Subsecs. (e) to (g). Pub. L. 104-262, Sec. 301(c)(4), added subsecs. (e) and (f) and redesignated former subsec. (e) as (g).

1993 - Subsec. (a). Pub. L. 103-210 designated existing provisions as par. (1) and substituted "other form of agreement for

the mutual use, or exchange of use, of - " along with subpars. (A) and (B) and par. (2), for "other form of agreement, as set forth in clauses (1) and (2) below, between Department health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools:

"(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Department health care facility; or

"(2) for the mutual use, or exchange of use, of specialized medical resources in a Department health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity."

1991 - Pub. L. 102-40 renumbered section 5053 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in introductory provisions.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsec. (b). Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (c). Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "under this section" for "hereunder".

Subsec. (d). Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in introductory provisions.

Subsec. (d)(1). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (d)(2). Pub. L. 102-83, Sec. 4(b)(2)(D), substituted "the two Secretaries" for "the Secretary and the Administrator".

Subsec. (e). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions.

1990 - Subsec. (a). Pub. L. 101-366, Sec. 202(b)(1), substituted "health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools" for "hospitals and other hospitals (or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools or clinics in the medical community" and struck out at end "The Administrator may determine the geographical limitations of a medical community as used in this section."

Subsec. (b). Pub. L. 101-366, Sec. 202(b)(2), substituted in first sentence "a methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved." for "a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment." and inserted before period at end of second sentence "and to funds that have been allotted to the facility that furnished the resource involved".

1986 - Subsec. (e). Pub. L. 99-576 added subsec. (e).

1983 - Subsec. (d). Pub. L. 98-160 substituted "title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)" for "subchapter XVIII of chapter 7 of title 42".

1982 - Subsec. (d)(1). Pub. L. 97-295 substituted "Health and Human Services" for "Health, Education, and Welfare".

1979 - Subsec. (a). Pub. L. 96-151 inserted provisions relating to applicability to organ banks, blood banks, or similar institutions.

1976 - Subsec. (a). Pub. L. 94-581, Secs. 206(c), 210(e)(11), substituted "when the Administrator determines" for "when he determines" and "clauses" for "paragraphs" in provisions preceding cl. (1), and inserted "health care" after "Veterans' Administration" in cls. (1) and (2).

Subsec. (c). Pub. L. 94-581, Sec. 206(c)(2), inserted "health care" after "Veterans' Administration" in two places.

Subsec. (d). Pub. L. 94-581, Sec. 115(a)(1), inserted subsec. (d).

1973 - Subsec. (a). Pub. L. 93-82 struck out "or medical schools" from parenthetical and inserted "or medical schools or clinics" after parenthetical.

1970 - Subsec. (a)(1). Pub. L. 91-496 substituted "for the mutual use, or exchange of use," for "for the exchange of use".

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-419, title IV, Sec. 404(b)(2), Nov. 1, 2000, 114 Stat. 1866, provided that the amendment made by section 404(b)(2) is effective Nov. 21, 1997, and as if included in Pub. L. 105-114 as originally enacted.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

REPORT TO CONGRESS ON RATES AND PROCEDURES COVERING PAYMENT OF BENEFITS FOR CARE OR SERVICES PROVIDED IN VETERANS' ADMINISTRATION HEALTH CARE FACILITIES TO INDIVIDUALS NOT ELIGIBLE FOR VETERANS'

HOSPITAL, NURSING HOME, DOMICILIARY, OR MEDICAL CARE

Section 115(c) of Pub. L. 94-581 provided that at such time as the rates and procedures described in subsec. (d) of this section were prescribed, the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services], in consultation with the Administrator of Veterans' Affairs, was to submit to the Committee on Ways and Means and the Committee on Veterans' Affairs of the House of Representatives and to the Committee on Finance and the Committee on Veterans' Affairs of the Senate a full report describing such rates and procedures.

-End-

-CITE-

38 USC Sec. 8154

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND
INFORMATION

-HEAD-

Sec. 8154. Exchange of medical information

-STATUTE-

(a) The Secretary is authorized to enter into agreements with medical schools, hospitals, research centers, and individual members of the medical profession under which medical information and techniques will be freely exchanged and the medical information services of all parties to the agreement will be available for use by any party to the agreement under conditions specified in the agreement. In carrying out the purposes of this section, the Secretary shall utilize recent developments in electronic equipment to provide a close educational, scientific, and professional link between Department hospitals and major medical centers. Such agreements shall be utilized by the Secretary to the maximum extent practicable to create, at each Department hospital which is a part of any such agreement, an environment of academic medicine which will help such hospital attract and retain highly trained and qualified members of the medical profession.

(b) In order to bring about utilization of all medical information in the surrounding medical community, particularly in remote areas, and to foster and encourage the widest possible cooperation and consultation among all members of the medical profession in such community, the educational facilities and programs established at Department hospitals and the electronic link to medical centers shall be made available for use by the surrounding medical community (including State home facilities furnishing domiciliary, nursing home, or hospital care to veterans). The Secretary may charge a fee for such services (on annual or like basis) at rates which the Secretary determines, after appropriate study, to be fair and equitable. The financial status of any user of such services shall be taken into consideration by the Secretary in establishing the amount of the fee to be paid. Any proceeds to the Government received therefrom shall be credited to the applicable Department medical appropriation.

(c) The Secretary is authorized to enter into agreements with public and nonprofit private institutions, organizations, corporations, and other entities in order to participate in cooperative health-care personnel education programs within the geographical area of any Department health-care facility located in an area remote from major academic health centers.

-SOURCE-

(Added Pub. L. 89-785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1374, Sec. 5054; amended Pub. L. 94-424, Sec. 1(1), Sept. 28, 1976, 90 Stat. 1332; Pub. L. 94-581, title II, Secs. 206(d), 210(e)(12), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 96-151, title I, Sec. 102(a), Dec. 20, 1979, 93 Stat. 1092; Pub. L. 97-251, Sec. 9, Sept. 8, 1982, 96 Stat. 716; renumbered Sec. 8154, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5054 of this title as this section.

Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1982 - Subsec. (b). Pub. L. 97-251 inserted "(including State home facilities furnishing domiciliary, nursing home, or hospital care to veterans)" after "by the surrounding medical community".

1979 - Subsec. (c). Pub. L. 96-151 added subsec. (c).

1976 - Subsec. (b). Pub. L. 94-581 substituted "by the surrounding" for "by surrounding" and "which the Administrator determines" for "which he determines".

Pub. L. 94-424 inserted provision that any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical appropriation.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

-End-

-CITE-

38 USC Sec. 8155

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

-HEAD-

Sec. 8155. Pilot programs; grants to medical schools

-STATUTE-

(a) The Secretary may establish an Advisory Subcommittee on Programs for Exchange of Medical Information, of the Special Medical Advisory Group, established under section 7312 of this title, to advise the Secretary on matters regarding the administration of this section and to coordinate these functions with other research and education programs in the Department of Medicine and Surgery. The Assistant Under Secretary for Health charged with administration of the Department of Medicine and Surgery medical research program shall be an ex officio member of this Subcommittee.

(b) The Secretary, upon the recommendation of the Subcommittee, is authorized to make grants to medical schools, hospitals, and research centers to assist such medical schools, hospitals, and research centers in planning and carrying out agreements authorized by section 8154 of this title. Such grants may be used for the employment of personnel, the construction of facilities, the purchasing of equipment when necessary to implement such programs, and for such other purposes as will facilitate the administration

of this section.

(c)(1) There is hereby authorized to be appropriated an amount not to exceed \$3,500,000 for fiscal year 1976; \$1,700,000 for the period beginning July 1, 1976, and ending September 30, 1976; \$4,000,000 for fiscal year 1977; \$4,000,000 for fiscal year 1978; and \$4,000,000 for fiscal year 1979 and for each of the three succeeding fiscal years, for the purpose of developing and carrying out medical information programs under this section on a pilot program basis and for the grants authority in subsection (b) of this section. Pilot programs authorized by this subsection shall be carried out at Department hospitals in geographically dispersed areas of the United States.

(2) Funds authorized under this section shall not be available to pay the cost of hospital, medical, or other care of patients except to the extent that such cost is determined by the Secretary to be incident to research, training, or demonstration activities carried out under this section.

(d) The Secretary, after consultation with the Subcommittee shall prescribe regulations covering the terms and conditions for making grants under this section.

(e) Each recipient of a grant under this section shall keep such records as the Secretary may prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit.

(f) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient of any grant under this section which are pertinent to any such grant.

-SOURCE-

(Added Pub. L. 89-785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1375, Sec. 5055; amended Pub. L. 92-69, Aug. 6, 1971, 85 Stat. 178; Pub. L. 94-424, Sec. 1(2), Sept. 28, 1976, 90 Stat. 1332; Pub. L. 94-581, title II, Secs. 206(e), 210(e)(13), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 96-151, title I, Sec. 102(b), Dec. 20, 1979, 93 Stat. 1092; renumbered Sec. 8155 and amended Pub. L. 102-40, title IV, Sec. 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, Sec. 1201(d)(19), Nov. 2, 1994, 108 Stat. 4684.)

-MISC1-

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-446 substituted "section 7312" for "section 4112".

1992 - Subsec. (a). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991 - Pub. L. 102-40, Sec. 402(b)(1), renumbered section 5055 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Subsec. (b). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-40, Sec. 402(d)(1), substituted "8154" for "5054".

Subsec. (c)(1). Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsecs. (c)(2), (d) to (f). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1979 - Subsec. (c)(1). Pub. L. 96-151 inserted authorization for the three succeeding fiscal years after fiscal year 1979.

1976 - Subsec. (a). Pub. L. 94-581 substituted "advise the Administrator" for "advise him" and "Assistant Chief Medical Director charged with administration of the Department of Medicine and Surgery medical research program" for "Assistant Chief Medical Director for Research and Education in Medicine".

Subsec. (c)(1). Pub. L. 94-424 substituted provisions authorizing appropriations of \$3,500,000 for fiscal year 1976; \$1,700,000 for the period beginning July 1, 1976, and ending Sept. 30, 1976; \$4,000,000 for fiscal year 1977; \$4,000,000 for fiscal year 1978; and \$4,000,000 for fiscal year 1979 for provisions authorizing appropriations of \$3,000,000 for each fiscal year 1968 through 1971, and such sums as may be necessary for each fiscal year 1972 through 1975.

1971 - Subsec. (c)(1). Pub. L. 92-69 substituted provisions authorizing appropriations of amounts up to \$3,000,000 for each fiscal year 1968 through 1971, and such sums as may be necessary for each fiscal year 1972 through 1975, for provisions authorizing appropriations of amounts up to \$3,000,000 for each of the first four fiscal years following fiscal year in which this subchapter was enacted.

-CHANGE-

CHANGE OF NAME

Reference to Veterans Health Services and Research Administration (or to Department of Medicine and Surgery of the Veterans' Administration) deemed to refer to Veterans Health Administration pursuant to section 2 of Pub. L. 102-40, set out as a Renaming of Veterans Health Services and Research Administration note under section 301 of this title.

Reference to Department of Medicine and Surgery deemed to refer to Veterans Health Services and Research Administration of the Department of Veterans Affairs, pursuant to section 10 of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of this title.

-MISC2-

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of

such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

-End-

-CITE-

38 USC Sec. 8156

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND
INFORMATION

-HEAD-

Sec. 8156. Coordination with health services development activities
carried out under the National Health Planning and Resources
Development Act of 1974

-STATUTE-

The Secretary and the Secretary of Health and Human Services shall, to the maximum extent practicable, coordinate programs carried out under this subchapter and programs carried out under part F of title XVI of the Public Health Service Act (42 U.S.C. 300t et seq.).

-SOURCE-

(Added Pub. L. 89-785, title II, Sec. 203, Nov. 7, 1966, 80 Stat. 1375, Sec. 5056; amended Pub. L. 94-581, title I, Sec. 115(a)(2), Oct. 21, 1976, 90 Stat. 2853; Pub. L. 97-295, Sec. 4(93), (95)(A), Oct. 12, 1982, 96 Stat. 1313; renumbered Sec. 8156, Pub. L. 102-40, title IV, Sec. 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

-REFTEXT-

REFERENCES IN TEXT

The National Health Planning and Resources Development Act of 1974, referred to in section catchline, is Pub. L. 93-641, Jan. 4, 1975, 88 Stat. 2225, as amended, which is classified generally to subchapters XIII (Sec. 300k et seq.) and XIV (Sec. 300o et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 201 of Title 42 and Tables.

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part F of title XVI of the Public Health Service Act was added by act Jan. 4, 1975, Pub. L. 93-641, Sec. 4, 88 Stat. 2273, and was redesignated as Part D by Pub. L. 96-79, title II, Sec. 202(a), Oct. 4, 1979, 93 Stat. 632. Part D of that Act is classified generally to Part D (Sec. 300t) of subchapter XIV of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-40 renumbered section 5056 of this title as this section.

Pub. L. 102-83 substituted "The Secretary" for "The Administrator".

1982 - Pub. L. 97-295, Sec. 4(95)(A), substituted "Health and Human Services" for "Health, Education, and Welfare".

Pub. L. 97-295, Sec. 4(93), inserted "(42 U.S.C. 300t et seq.)" after "part F of title XVI of the Public Health Service Act".

1976 - Pub. L. 94-581 substituted "health services development activities carried out under the National Health Planning and Resources Development Act of 1974" for "programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965" in section catchline and "part F of title XVI" for "title IX" in text.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

-End-

-CITE-

38 USC Sec. 8157

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

-HEAD-

Sec. 8157. Joint title to medical equipment

-STATUTE-

(a) Subject to subsection (b), the Secretary may enter into agreements with institutions described in section 8153(a) of this title for the joint acquisition of medical equipment.

(b)(1) The Secretary may not pay more than one-half of the purchase price of equipment acquired through an agreement under subsection (a).

(2) Any equipment to be procured under such an agreement shall be procured by the Secretary. Title to such equipment shall be held jointly by the United States and the institution.

(3) Before equipment acquired under such an agreement may be used, the parties to the agreement shall arrange by contract under section 8153 of this title for the exchange or use of the equipment.

(4) The Secretary may not contract for the acquisition of medical equipment to be purchased jointly under an agreement under subsection (a) until the institution which enters into the agreement provides to the Secretary its share of the purchase price of the medical equipment.

(c)(1) Notwithstanding any other provision of law, the Secretary

may transfer the interest of the Department in equipment acquired through an agreement under subsection (a) to the institution which holds joint title to the equipment if the Secretary determines that the transfer would be justified by compelling clinical considerations or the economic interest of the Department. Any such transfer may only be made upon agreement by the institution to pay to the Department the amount equal to one-half of the depreciated purchase price of the equipment. Any such payment when received shall be credited to the applicable Department medical appropriation.

(2) Notwithstanding any other provision of law, the Secretary may acquire the interest of an institution in equipment acquired under subsection (a) if the Secretary determines that the acquisition would be justified by compelling clinical considerations or the economic interests of the Department. The Secretary may not pay more than one-half the depreciated purchase price of that equipment.

-SOURCE-

(Added Pub. L. 102-405, title I, Sec. 103(a)(1), Oct. 9, 1992, 106 Stat. 1973.)

-End-

-CITE-

38 USC Sec. 8158

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY
SUBCHAPTER IV - SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

-HEAD-

Sec. 8158. Deposit in escrow

-STATUTE-

(a) To facilitate the procurement of medical equipment pursuant to section 8157 of this title, the Secretary may enter into escrow agreements with institutions described in section 8153(a) of this title. Any such agreement shall provide that -

(1) the institutions shall pay to the Secretary the funds necessary to make a payment under section 8157(b)(4) of this title;

(2) the Secretary, as escrow agent, shall administer those funds in an escrow account; and

(3) the Secretary shall disburse the escrowed funds to pay for such equipment upon its delivery or in accordance with the contract to procure the equipment and shall disburse all accrued interest or other earnings on the escrowed funds to the institution.

(b) As escrow agent for funds placed in escrow pursuant to an agreement under subsection (a), the Secretary may -

(1) invest the escrowed funds in obligations of the Federal Government or obligations which are insured or guaranteed by the

Federal Government;

- (2) retain in the escrow account interest or other earnings on such investments;
- (3) disburse the funds pursuant to the escrow agreement; and
- (4) return undisbursed funds to the institution.

(c)(1) If the Secretary enters into an escrow agreement under this section, the Secretary may enter into an agreement to procure medical equipment if one-half the purchase price of the equipment is available in an appropriation or fund for the expenditure or obligation.

(2) Funds held in an escrow account under this section shall not be considered to be public funds.

-SOURCE-

(Added Pub. L. 102-405, title I, Sec. 103(a)(1), Oct. 9, 1992, 106 Stat. 1974.)

-End-

-CITE-

38 USC SUBCHAPTER V - ENHANCED-USE LEASES OF REAL
PROPERTY 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER V - ENHANCED-USE LEASES OF REAL PROPERTY

-HEAD-

SUBCHAPTER V - ENHANCED-USE LEASES OF REAL PROPERTY

-End-

-CITE-

38 USC Sec. 8161 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER V - ENHANCED-USE LEASES OF REAL PROPERTY

-HEAD-

Sec. 8161. Definitions

-STATUTE-

For the purposes of this subchapter:

- (1) The term "enhanced-use lease" means a written lease entered into by the Secretary under this subchapter.
- (2) The term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

-SOURCE-

(Added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 417.)

-MISC1-

TRAINING AND OUTREACH REGARDING AUTHORITY

Pub. L. 106-117, title II, Sec. 208(f), Nov. 30, 1999, 113 Stat. 1568, provided that: "The Secretary [of Veterans Affairs] shall take appropriate actions to provide training and outreach to personnel at Department [of Veterans Affairs] medical centers regarding the enhanced-use lease authority under subchapter V of chapter 81 of title 38, United States Code. The training and outreach shall address methods of approaching potential lessees in the medical or commercial sectors regarding the possibility of entering into leases under that authority and other appropriate matters."

INDEPENDENT ANALYSIS OF OPPORTUNITIES FOR USE OF AUTHORITY

Pub. L. 106-117, title II, Sec. 208(g), Nov. 30, 1999, 113 Stat. 1568, provided that:

"(1) The Secretary [of Veterans Affairs] shall take appropriate actions to secure from an appropriate entity (or entities) independent of the Department [of Veterans Affairs] an analysis (or analyses) of opportunities for the use of the enhanced-use lease authority under subchapter V of chapter 81 of title 38, United States Code.

"(2) An analysis under paragraph (1) shall include -

"(A) a survey of facilities of the Department for purposes of identifying Department property that presents an opportunity for lease under the enhanced-use lease authority;

"(B) an assessment of the feasibility of entering into enhanced-use leases under that authority in the case of any property identified under subparagraph (A) as presenting an opportunity for such lease; and

"(C) an assessment of the resources required at the Department facilities concerned, and at the Department Central Office, in order to facilitate the entering into of enhanced-used leases in the case of property so identified.

"(3) If as a result of a survey under paragraph (2)(A) an entity carrying out an analysis under this subsection determines that a particular Department property presents no opportunities for lease under the enhanced-use lease authority, the analysis shall include the entity's explanation of that determination.

"(4) If as a result of such a survey an entity carrying out an analysis under this subsection determines that certain Department property presents an opportunity for lease under the enhanced-use lease authority, the analysis shall include a single integrated business plan, developed by the entity, that addresses the strategy and resources necessary to implement the plan for all property determined to present an opportunity for such lease."

ENHANCED USE LEASES

Pub. L. 104-110, title II, Sec. 202(c), Feb. 13, 1996, 110 Stat. 771, provided that: "The Secretary shall submit to Congress, not later than March 31, 1997, a report evaluating the operation of the program under subchapter V of chapter 81 of title 38, United States Code."

-End-

-CITE-

38 USC Sec. 8162

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY

SUBCHAPTER V - ENHANCED-USE LEASES OF REAL PROPERTY

-HEAD-

Sec. 8162. Enhanced-use leases

-STATUTE-

(a)(1) The Secretary may in accordance with this subchapter enter into leases with respect to real property that is under the jurisdiction or control of the Secretary. Any such lease under this subchapter may be referred to as an "enhanced-use lease". The Secretary may dispose of any such property that is leased to another party under this subchapter in accordance with section 8164 of this title. The Secretary may exercise the authority provided by this subchapter notwithstanding section 8122 of this title, subchapter II of chapter 5 of title 40, sections 541-555 and 1302 of title 40, or any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section. The applicability of this subchapter to section 421(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) is covered by subsection (c).

(2) The Secretary may enter into an enhanced-use lease only if -

(A) the Secretary determines that -

(i) at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department;

(ii) the lease will not be inconsistent with and will not adversely affect the mission of the Department; and

(iii) the lease will enhance the use of the property; or

(B) the Secretary determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(3) The provisions of sections 3141-3144, 3146, and 3147 of title 40 shall not, by reason of this section, become inapplicable to property that is leased to another party under an enhanced-use lease.

(4) A property that is leased to another party under an enhanced-use lease may not be considered to be unutilized or underutilized for purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(b)(1)(A) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall select the party with whom the lease will be entered into using selection procedures determined by the Secretary that ensure the integrity of the selection process.

(B) In the case of a property that the Secretary determines is appropriate for use as a facility to furnish services to homeless veterans under chapter 20 of this title, the Secretary may enter into an enhanced-use lease with a provider of homeless services without regard to the selection procedures required under subparagraph (A).

(2) The term of an enhanced-use lease may not exceed 75 years.

(3)(A) Each enhanced-use lease shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in whole or in part through consideration in-kind.

(B) Consideration in-kind may include provision of goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space.

(4) The terms of an enhanced-use lease may provide for the Secretary to -

(A) obtain facilities, space, or services on the leased property; and

(B) use minor construction funds for capital contribution payments.

(c)(1) Subject to paragraph (2), the entering into an enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) or section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008 shall be considered to be prohibited by such sections unless specifically authorized by law.

(2) The entering into an enhanced-use lease by the Secretary covering any land or improvement described in such section 421(b)(2) shall not be considered to be prohibited under that section if under the lease -

(A) the designated property is to be used only for child-care services;

(B) those services are to be provided only for the benefit of -

(i) employees of the Department;

(ii) individuals employed on the premises of such property; and

(iii) employees of a health-personnel educational institution that is affiliated with a Department facility;

(C) over one-half of the employees benefited by the child-care services provided are required to be employees of the Department; and

(D) over one-half of the children to whom child-care services are provided are required to be children of employees of the Department.

-SOURCE-

(Added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 417; amended Pub. L. 106-117, title II, Sec. 208(a), (b), Nov. 30, 1999, 113 Stat. 1567; Pub. L. 106-400, Sec. 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107-95, Sec. 10(b), Dec. 21, 2001, 115 Stat. 920; Pub. L. 107-217, Sec. 3(j)(5), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108-178, Sec. 4(i)(1), Dec. 15, 2003, 117 Stat. 2642; Pub. L. 110-161, div. I, title II, Sec. 224(c), Dec. 26, 2007, 121 Stat. 2272.)

-REFTEXT-

REFERENCES IN TEXT

Section 421(b) of the Veterans' Benefits and Services Act of 1988, referred to in subsecs. (a)(1) and (c), is section 421(b) of Pub. L. 100-322, title IV, May 20, 1988, 102 Stat. 553, which is not classified to the Code.

Section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008, referred to in subsec. (c)(1), is section 224(a) of title II of div. I of Pub. L. 110-161, Dec. 26, 2007, 121 Stat. 2272, which is not classified to the Code.

-MISC1-

AMENDMENTS

2007 - Subsec. (c)(1). Pub. L. 110-161 inserted "or section 224(a) of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2008" after "section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553)" and substituted "such sections" for "that section".

2003 - Subsec. (a)(3). Pub. L. 108-178 struck out comma after "of title 40".

2002 - Subsec. (a)(1). Pub. L. 107-217, Sec. 3(j)(5)(A), substituted "subchapter II of chapter 5 of title 40, sections 541-555 and 1302 of title 40" for "section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484)".

Subsec. (a)(3). Pub. L. 107-217, Sec. 3(j)(5)(B), substituted "sections 3141-3144, 3146, and 3147 of title 40" for "the Act of March 3, 1931 (40 U.S.C. 276a et seq.)".

2001 - Subsec. (b)(1). Pub. L. 107-95 designated existing provisions as subpar. (A) and added subpar. (B).

2000 - Subsec. (a)(4). Pub. L. 106-400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act".

1999 - Subsec. (a)(2). Pub. L. 106-117, Sec. 208(a), inserted subpar. (A) designation before "the Secretary", redesignated subpars. (A) to (C) as cls. (i) to (iii), respectively, and realigned the margins, substituted "; or" for period at end of cl. (iii), and added subpar. (B).

Subsec. (b)(2). Pub. L. 106-117, Sec. 208(b)(1), substituted "may not exceed 75 years." for "may not exceed - "

"(A) 35 years, in the case of a lease involving the construction of a new building or the substantial rehabilitation of an existing building, as determined by the Secretary; or

"(B) 20 years, in the case of a lease not described in subparagraph (A)."

Subsec. (b)(4). Pub. L. 106-117, Sec. 208(b)(2), added par. (4) and struck out former par. (4) which read as follows: "Any payment by the Secretary for the use of space or services by the Department on property that has been leased under this subchapter may only be made from funds appropriated to the Department for the activity that uses the space or services. No other such payment may be made by the Secretary to a lessee under an enhanced-use lease unless the authority to make the payment is provided in advance in an appropriation Act."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-161, div. I, title II, Sec. 224(d), Dec. 26, 2007, 121 Stat. 2272, provided that: "This section [amending this section], including the amendment made by this section, shall apply

with respect to fiscal year 2008 and each fiscal year thereafter."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-95, Sec. 10(c), Dec. 21, 2001, 115 Stat. 920, provided that: "The amendments made by subsection (b) [amending this section] shall apply to leases entered into on or after the date of the enactment of this Act [Dec. 21, 2001]."

-End-

-CITE-

38 USC Sec. 8163

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
PART VI - ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY
FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER V - ENHANCED-USE LEASES OF REAL PROPERTY

-HEAD-

Sec. 8163. Hearing and notice requirements regarding proposed leases

-STATUTE-

(a) If the Secretary proposes to enter into an enhanced-use lease with respect to certain property, the Secretary shall conduct a public hearing before entering into the lease. The hearing shall be conducted in the community in which the property is located. At the hearing, the Secretary shall receive the views of veterans service organizations and other interested parties regarding the proposed lease of the property and the possible effects of the uses to be made of the property under a lease of the general character then contemplated. The possible effects to be addressed at the hearing shall include effects on -

- (1) local commerce and other aspects of the local community;
- (2) programs administered by the Department; and
- (3) services to veterans in the community.

(b) Before conducting such a hearing, the Secretary shall provide reasonable notice to the congressional veterans' affairs committees and to the public of the proposed lease and of the hearing. The notice shall include the following:

- (1) The time and place of the hearing.
- (2) Identification of the property proposed to be leased.
- (3) A description of the proposed uses of the property under the lease.
- (4) A description of how the uses to be made of the property under a lease of the general character then contemplated -
 - (A) would -
 - (i) contribute in a cost-effective manner to the mission of the Department;
 - (ii) not be inconsistent with the mission of the

Department;
(iii) not adversely affect the mission of the Department;
and
(iv) affect services to veterans; or

(B) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(5) A description of how those uses would affect services to veterans.

(c)(1) If after a hearing under subsection (a) the Secretary intends to enter into an enhanced-use lease of the property involved, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intention to enter into such lease and shall publish a notice of such intention in the Federal Register.

(2) The Secretary may not enter into an enhanced use lease until the end of the 45-day period beginning on the date of the submission of notice under paragraph (1).

(3) Each notice under paragraph (1) shall include the following:

(A) An identification of the property involved.

(B) An explanation of the background of, rationale for, and economic factors in support of, the proposed lease.

(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed designation, together with a summary of the Secretary's evaluation of those views.

(D) A description of the provisions of the proposed lease.

(E) A description of how the proposed lease -

(i) would -

(I) contribute in a cost-effective manner to the mission of the Department;

(II) not be inconsistent with the mission of the Department;

(III) not adversely affect the mission of the Department;
and

(IV) affect services to veterans; or

(ii) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(F) A description of how the proposed lease would affect services to veterans.

(G) A summary of a cost-benefit analysis of the proposed lease.

-SOURCE-

(Added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 419; amended Pub. L. 106-117, title II, Sec. 208(c), Nov. 30, 1999, 113 Stat. 1567; Pub. L. 106-419, title II, Sec. 241, title IV, Sec. 404(b)(1), Nov. 1, 2000, 114 Stat. 1847, 1865; Pub. L. 108-170, title II, Sec. 202(a), (d)(1), Dec. 6, 2003, 117 Stat. 2047, 2048.)

-MISC1-

AMENDMENTS

2003 - Pub. L. 108-170, Sec. 202(d)(1), substituted "Hearing and notice requirements regarding proposed leases" for "Designation of

property to be leased" in section catchline.

Subsec. (a). Pub. L. 108-170, Sec. 202(a)(1), in first sentence, substituted "enter into an enhanced-use lease with respect to certain property" for "designate a property to be leased under an enhanced-use lease" and "before entering into the lease" for "before making the designation".

Subsec. (b). Pub. L. 108-170, Sec. 202(a)(2), substituted "to the congressional veterans' affairs committees and to the public of the proposed lease" for "of the proposed designation" in introductory provisions.

Subsec. (c)(1). Pub. L. 108-170, Sec. 202(a)(3)(A), substituted "enter into an enhanced-use lease of the property involved" for "designate the property involved" and "to enter into such lease" for "to so designate the property".

Subsec. (c)(2). Pub. L. 108-170, Sec. 202(a)(3)(B), substituted "45-day period" for "90-day period".

Subsec. (c)(3)(D). Pub. L. 108-170, Sec. 202(a)(3)(C)(i), substituted "description of the provisions" for "general description".

Subsec. (c)(3)(G). Pub. L. 108-170, Sec. 202(a)(3)(C)(ii), added subpar. (G).

Subsec. (c)(4). Pub. L. 108-170, Sec. 202(a)(3)(D), struck out par. (4) which read as follows: "Not less than 30 days before entering into an enhanced-use lease, the Secretary shall submit to the congressional veterans' affairs committees a report on the proposed lease. The report shall include -

"(A) updated information with respect to the matters described in paragraph (3);

"(B) a summary of a cost-benefit analysis of the proposed lease;

"(C) a description of the provisions of the proposed lease; and

"(D) a notice of designation with respect to the property."

2000 - Subsec. (c)(2). Pub. L. 106-419, Sec. 241, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Secretary may not enter into an enhanced-use lease until the end of a 60-day period of continuous session of Congress following the date of the submission of notice under paragraph (1). For purposes of the preceding sentence, continuity of a session of Congress is broken only by an adjournment sine die, and there shall be excluded from the computation of such 60-day period any day during which either House of Congress is not in session during an adjournment of more than three days to a day certain."

Subsec. (c)(3)(E). Pub. L. 106-419, Sec. 404(b)(1), amended directory language of Pub. L. 106-117, Sec. 208(c)(2). See 1999 Amendment note below.

1999 - Subsec. (b). Pub. L. 106-117, Sec. 208(c)(1)(A), substituted "include the following:" for "include - " in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 106-117, Sec. 208(c)(1)(B), (C), capitalized the first letter of the first word and substituted a period for the semicolon at end.

Subsec. (b)(4). Pub. L. 106-117, Sec. 208(c)(1)(B), (D), in introductory provisions, capitalized the first letter of the first word, added subpars. (A) and (B), and struck out former subpars. (A) to (C) which read as follows:

"(A) would contribute in a cost-effective manner to the mission of the Department;

"(B) would not be inconsistent with the mission of the Department; and

"(C) would not adversely affect the mission of the Department; and".

Subsec. (b)(5). Pub. L. 106-117, Sec. 208(c)(1)(B), capitalized the first letter of the first word.

Subsec. (c)(3)(E). Pub. L. 106-117, Sec. 208(c)(2), as amended by Pub. L. 106-419, Sec. 404(b)(1), substituted cls. (i) and (ii) for former cls. (i) to (iii) which read as follows:

"(i) would contribute in a cost-effective manner to the mission of the Department;

"(ii) would not be inconsistent with the mission of the Department; and

"(iii) would not adversely affect the mission of the Department."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-419, title IV, Sec. 404(b)(1), Nov. 1, 2000, 114 Stat. 1865, provided that the amendment made by section 404(b)(1) is effective Nov. 30, 1999, and as if included in Pub. L. 106-117 as originally enacted.

-End-

-CITE-

38 USC Sec. 8164

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER V - ENHANCED-USE LEASES OF REAL PROPERTY

-HEAD-

Sec. 8164. Authority for disposition of leased property

-STATUTE-

(a) If, during the term of an enhanced-use lease or within 30 days after the end of the term of the lease, the Secretary determines that the leased property is no longer needed by the Department, the Secretary may initiate action for the transfer to the lessee of all right, title, and interest of the United States in the property. A disposition of property may not be made under this section unless the Secretary determines that the disposition under this section rather than under section 8118 or 8122 of this title is in the best interests of the Department.

(b) A disposition under this section may be made for such consideration as the Secretary determines is in the best interest of the United States and upon such other terms and conditions as the Secretary considers appropriate.

(c) Not less than 45 days before a disposition of property is made under this section, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intent to dispose of the property and shall publish notice of the proposed disposition in the Federal Register. The notice shall describe the background of, rationale for, and economic factors in support of, the proposed disposition (including a cost-benefit analysis summary) and the method, terms, and conditions of the proposed disposition.

-SOURCE-

(Added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14, 1991, 105

Stat. 420; amended Pub. L. 108-170, title II, Sec. 202(b), Dec. 6, 2003, 117 Stat. 2047; Pub. L. 108-422, title IV, Sec. 411(e)(3), Nov. 30, 2004, 118 Stat. 2390.)

-MISC1-

AMENDMENTS

2004 - Subsec. (a). Pub. L. 108-422 inserted "8118 or" after "rather than under section".

2003 - Subsec. (a). Pub. L. 108-170, Sec. 202(b)(1), struck out "by requesting the Administrator of General Services to dispose of the property pursuant to subsection (b)" after "in the property" in first sentence and struck out at end "The Administrator, upon request of the Secretary, shall take appropriate action under this section to dispose of property of the Department that is or has been subject to an enhanced-use lease."

Subsec. (b). Pub. L. 108-170, Sec. 202(b)(2), substituted "Secretary determines" for "Secretary and the Administrator of General Services jointly determine" and "Secretary considers" for "Secretary and the Administrator consider".

Subsec. (c). Pub. L. 108-170, Sec. 202(b)(3), substituted "45 days" for "90 days".

-End-

-CITE-

38 USC Sec. 8165

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE

LEASES OF REAL PROPERTY

SUBCHAPTER V - ENHANCED-USE LEASES OF REAL PROPERTY

-HEAD-

Sec. 8165. Use of proceeds

-STATUTE-

(a)(1) Funds received by the Department under an enhanced-use lease and remaining after any deduction from those funds under subsection (b) shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of this title.

(2) Funds received by the Department from a disposal of leased property under section 8164 of this title shall be deposited in the Department of Veterans Affairs Capital Asset Fund established under section 8118 of this title.

(b) An amount sufficient to pay for any expenses incurred by the Secretary in any fiscal year in connection with an enhanced-use lease shall be deducted from the proceeds of the lease for that fiscal year and may be used by the Secretary to reimburse the account from which the funds were used to pay such expenses. The Secretary may use the proceeds from any enhanced-use lease to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional enhanced-use leases.

-SOURCE-

(Added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 421; amended Pub. L. 106-117, title II, Sec. 208(d), Nov. 30, 1999, 113 Stat. 1568; Pub. L. 107-217, Sec. 3(j)(6), Aug. 21, 2002, 116 Stat. 1301; Pub. L. 108-7, div. K, title I, Sec. 113(d)(1), Feb. 20, 2003, 117 Stat. 483; Pub. L. 108-170, title II, Sec. 202(c), Dec. 6, 2003, 117 Stat. 2048; Pub. L. 108-178, Sec. 4(i)(2), Dec. 15, 2003, 117 Stat. 2642; Pub. L. 108-422, title IV, Sec. 411(e)(4), Nov. 30, 2004, 118 Stat. 2390.)

-MISC1-

AMENDMENTS

2004 - Subsec. (a)(2). Pub. L. 108-422 substituted "Department of Veterans Affairs Capital Asset Fund established under section 8118 of this title" for "nursing home revolving fund".

2003 - Subsec. (a)(1). Pub. L. 108-7 substituted "Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of this title" for "Department of Veterans Affairs Health Services Improvement Fund established under section 1729B of this title".

Subsec. (a)(2). Pub. L. 108-170, Sec. 202(c)(1), struck out "and remaining after any deduction from such funds under the laws referred to in subsection (c)" after "title".

Subsec. (b). Pub. L. 108-170, Sec. 202(c)(2), inserted at end "The Secretary may use the proceeds from any enhanced-use lease to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional enhanced-use leases."

Subsec. (c). Pub. L. 108-178 struck out comma after "of title 40".

Pub. L. 108-170, Sec. 202(c)(3), struck out subsec. (c) which read as follows: "Subsection (a) does not affect the applicability of subchapter IV of chapter 5 of title 40 with respect to reimbursement of the Administrator of General Services for expenses arising from any disposal of property under section 8164 of this title."

2002 - Subsec. (c). Pub. L. 107-217 substituted "subchapter IV of chapter 5 of title 40" for "section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485) or the Act of June 8, 1896 (40 U.S.C. 485a)".

1999 - Subsec. (a)(1). Pub. L. 106-117 added par. (1) and struck out former par. (1) which read as follows: "Of the funds received by the Department under an enhanced-use lease and remaining after any deduction from such funds under subsection (b), 75 percent shall be deposited in the nursing home revolving fund established under section 8116 of this title and 25 percent shall be credited to the Medical Care Account of the Department for the use of the Department facility at which the property is located."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

-End-

-CITE-

38 USC Sec. 8166

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
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-HEAD-

Sec. 8166. Construction standards

-STATUTE-

(a) Unless the Secretary provides otherwise, the construction, alteration, repair, remodeling, or improvement of the property that is the subject of the lease shall be carried out so as to comply with all standards applicable to construction of Federal buildings. Any such construction, alteration, repair, remodeling, or improvement shall not be subject to any State or local law relating to land use, building codes, permits, or inspections unless the Secretary provides otherwise.

(b) Unless the Secretary has provided that Federal construction standards are not applicable to a property, the Secretary shall conduct periodic inspections of any such construction, alteration, repair, remodeling, or improvement for the purpose of ensuring that the standards are met.

-SOURCE-

(Added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 421; amended Pub. L. 108-422, title IV, Sec. 417, Nov. 30, 2004, 118 Stat. 2393.)

-MISC1-

AMENDMENTS

2004 - Subsec. (a). Pub. L. 108-422 inserted "land use," after "relating to" in second sentence.

-End-

-CITE-

38 USC Sec. 8167 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
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-HEAD-

Sec. 8167. Exemption from State and local taxes

-STATUTE-

The interest of the United States in any property subject to an enhanced-use lease and any use by the United States of such property during such lease shall not be subject, directly or indirectly, to any State or local law relative to taxation, fees,

assessments, or special assessments, except sales taxes charged in connection with any construction, alteration, repair, remodeling, or improvement project carried out under the lease.

-SOURCE-

(Added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14, 1991, 105 Stat. 421.)

-End-

-CITE-

38 USC Sec. 8168 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
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Sec. 8168. Repealed.

-MISC1-

[Sec. 8168. Repealed. Pub. L. 105-114, title II, Sec. 205(b)(1),
Nov. 21, 1997, 111 Stat. 2288].
Section, added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14,
1991, 105 Stat. 421, limited number of enhanced-use leases that
could be entered into under this subchapter.

-End-

-CITE-

38 USC Sec. 8169 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS
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-HEAD-

Sec. 8169. Expiration

-STATUTE-

The authority of the Secretary to enter into enhanced-use leases
under this subchapter expires on December 31, 2011.

-SOURCE-

(Added Pub. L. 102-86, title IV, Sec. 401(a), Aug. 14, 1991, 105
Stat. 422; amended Pub. L. 103-452, title I, Sec. 103(d), Nov. 2,
1994, 108 Stat. 4786; Pub. L. 104-110, title I, Sec. 101(k), Feb.
13, 1996, 110 Stat. 769; Pub. L. 105-114, title II, Sec. 205(a),
Nov. 21, 1997, 111 Stat. 2288; Pub. L. 106-117, title II, Sec.

-MISC1-

AMENDMENTS

1999 - Pub. L. 106-117 substituted "December 31, 2011" for "December 31, 2001".

1997 - Pub. L. 105-114 substituted "December 31, 2001" for "December 31, 1997".

1996 - Pub. L. 104-110 substituted "December 31, 1997" for "December 31, 1995".

1994 - Pub. L. 103-452 substituted "December 31, 1995" for "December 31, 1994".

RATIFICATION OF ACTIONS DURING PERIOD OF EXPIRED AUTHORITY

Any action taken by Secretary of Veterans Affairs before Feb. 13, 1996, under provision of law amended by title I of Pub. L. 104-110 that was taken during period beginning on date on which authority of Secretary under such provision of law expired and ending on Feb. 13, 1996, considered to have same force and effect as if such amendment had been in effect at time of that action, see section 103 of Pub. L. 104-110, set out as a note under section 1710 of this title.

-End-