

title II, § 221(a), Oct. 28, 1986, 100 Stat. 3259; renumbered § 8102 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, § 14(f)(2), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40, § 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, § 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).

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

(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 non-performance 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.

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

AMENDMENTS

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

1991—Pub. L. 102-40, § 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, § 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, §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.

§ 8104. Congressional approval of certain medical facility acquisitions

(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.

(7) In the case of a prospectus proposing funding for a major medical facility lease, a detailed analysis of how the lease is expected to comply with Office of Management and Budget Circular A-11 and section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act"). Any such analysis shall include—

(A) an analysis of the classification of the lease as a "lease-purchase", "capital lease", or "operating lease" as those terms are defined in Office of Management and Budget Circular A-11;

(B) an analysis of the obligation of budgetary resources associated with the lease; and

(C) an analysis of the methodology used in determining the asset cost, fair market value, and cancellation costs of the lease.

(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