

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

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).

(h)(1) Not less than 30 days before entering into a major medical facility lease, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

(A) notice of the Secretary's intention to enter into the lease;

(B) a detailed summary of the proposed lease;

(C) a description and analysis of any differences between the prospectus submitted pursuant to subsection (b) and the proposed lease; and

(D) a scoring analysis demonstrating that the proposed lease fully complies with Office of Management and Budget Circular A-11.

(2) Each committee described in paragraph (1) shall ensure that any information submitted to the committee under such paragraph is treated by the committee with the same level of confidentiality as is required by law of the Secretary and subject to the same statutory penalties for unauthorized disclosure or use as the Secretary.

(3) Not more than 30 days after entering into a major medical facility lease, the Secretary shall submit to each committee described in paragraph (1) a report on any material differences between the lease that was entered into and the proposed lease described under such paragraph, including how the lease that was entered into changes the previously submitted scoring analysis described in subparagraph (D) of such paragraph.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 56, §5004; amended Pub. L. 99-166, title III, §§301, 303, Dec. 3, 1985, 99 Stat. 954, 955; Pub. L. 99-576, title II, §221(b), Oct. 28, 1986, 100 Stat. 3259; Pub. L. 100-322, title IV, §422, May 20, 1988, 102 Stat. 553; renumbered §8104 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. 102-405, title III, §301(a), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-79, §3(a), Aug. 13, 1993, 107 Stat. 771; Pub. L. 104-262, title II, §§205(a), 206(a), (c), Oct. 9, 1996, 110 Stat. 3189, 3190; Pub. L. 105-368, title VII, §704, Nov. 11, 1998, 112 Stat. 3350; Pub. L. 108-170, title II, §201, Dec. 6, 2003, 117 Stat. 2047; Pub. L. 108-422, title IV, §416, Nov. 30, 2004, 118 Stat. 2393; Pub. L. 109-461, title VIII, §812, Dec. 22, 2006, 120 Stat. 3447; Pub. L. 110-387, title VII, §705, Oct. 10, 2008, 122 Stat. 4138; Pub. L. 111-275, title IX, §905, Oct. 13, 2010, 124 Stat. 2895; Pub. L. 112-37, §§6, 7, Oct. 5, 2011, 125 Stat. 394, 396; Pub. L. 113-146, title VI, §602(c), Aug. 7, 2014, 128 Stat. 1794.)

AMENDMENTS

2014—Subsec. (b)(7). Pub. L. 113-146, §602(c)(1), added par. (7).

Subsec. (h). Pub. L. 113-146, §602(c)(2), added subsec. (h).

2011—Subsec. (b)(1). Pub. L. 112-37, §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, §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, §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, §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, §6(1)(B), redesignated par. (7) as (5). Former par. (5) redesignated (3).

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

Subsec. (d). Pub. L. 112-37, §6(2)(A), substituted “major construction project” for “major medical facility project” wherever appearing.

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

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

Subsec. (d)(2)(C). Pub. L. 112-37, §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, §206(a), substituted “\$4,000,000” for “\$3,000,000”.

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

Subsec. (f). Pub. L. 104-262, §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, §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, §301(a)(2), inserted “new” after “as a” and substituted “\$300,000” for “\$500,000”.

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

1991—Pub. L. 102-40, §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, §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, §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, §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, §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, §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, § 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, § 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

Pub. L. 104-262, title II, § 205(b), Oct. 9, 1996, 110 Stat. 3190, 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

Pub. L. 104-262, title II, § 206(b)(2), Oct. 9, 1996, 110 Stat. 3190, 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.”

Pub. L. 102-405, title III, § 301(b), Oct. 9, 1992, 106 Stat. 1984, 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, § 206(b)(1), Oct. 9, 1996, 110 Stat. 3190.

BUDGETARY TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS MAJOR MEDICAL FACILITIES LEASES

Pub. L. 113-146, title VI, § 602, Aug. 7, 2014, 128 Stat. 1794, provided that:

“(a) FINDINGS.—Congress finds the following:

“(1) Title 31, United States Code, requires the Department of Veterans Affairs to record the full cost of its contractual obligation against funds available at the time a contract is executed.

“(2) Office of Management and Budget Circular A-11 provides guidance to agencies in meeting the statutory requirements under title 31, United States Code, with respect to leases.

“(3) For operating leases, Office of Management and Budget Circular A-11 requires the Department of Veterans Affairs to record up-front budget authority in an amount equal to total payments under the full term of the lease or [an] amount sufficient to cover first year lease payments plus cancellation costs”.

“(b) REQUIREMENT FOR OBLIGATION OF FULL COST.—

“(1) IN GENERAL.—Subject to the availability of appropriations provided in advance, in exercising the authority of the Secretary of Veterans Affairs to enter into leases provided in this Act, the Secretary shall record, pursuant to section 1501 of title 31, United States Code, as the full cost of the contractual obligation at the time a contract is executed either—

“(A) an amount equal to total payments under the full term of the lease; or

“(B) if the lease specifies payments to be made in the event the lease is terminated before its full term, an amount sufficient to cover the first year lease payments plus the specified cancellation costs.

“(2) SELF-INSURING AUTHORITY.—The requirements of paragraph (1) may be satisfied through the use of the self-insuring authority identified in title 40, United States Code, consistent with Office of Management and Budget Circular A-11.

“(c) TRANSPARENCY.—[AMENDED SUBSECS. (B)(7) AND (H) OF THIS SECTION.]

“(d) RULE OF CONSTRUCTION.—Nothing in this section, or the amendments made by this section, shall be construed to in any way relieve the Department of Veterans Affairs from any statutory or regulatory obligations or requirements existing prior to the enactment of this section and such amendments.”

§ 8105. Structural requirements

(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.

(Added Pub. L. 96-22, title III, § 301(a), June 13, 1979, 93 Stat. 57, § 5005; amended Pub. L. 96-128, title V, § 501(e), Nov. 28, 1979, 93 Stat. 987; renumbered § 8105, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §§ 4(a)(3),