

1977—Subsec. (a). Pub. L. 95-62, §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, §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, §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, §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, §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, §206(b), substituted “veterans” for “war veterans” in two places.

Subsec. (b). Pub. L. 94-581, §§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 L. 89-311 repealed par.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

Pub. L. 102-585, title IV, §403(b), Nov. 4, 1992, 106 Stat. 4954, provided that: “The amendment made by subsection (a) [amending this section] shall apply to projects that are conditionally approved after September 30, 1992.”

Pub. L. 102-585, title IV, §404(b), Nov. 4, 1992, 106 Stat. 4954, 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

Pub. L. 99-576, title II, §224(f), Oct. 28, 1986, 100 Stat. 3263, 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, §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.”

#### § 8136. Recapture provisions

(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 fa-

cilities, 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.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 503, §5036; amended Pub. L. 93-82, title IV, §403(f), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94-581, title II, §206(b), Oct. 21, 1976, 90 Stat. 2859; Pub. L. 95-62, §3(13), July 5, 1977, 91 Stat. 263; Pub. L. 97-295, §4(92), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-528, title I, §105(4), Oct. 19, 1984, 98 Stat. 2690; renumbered §8136, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title IV, §405, Nov. 4, 1992, 106 Stat. 4954; Pub. L. 106-419, title II, §222, Nov. 1, 2000, 114 Stat. 1845.)

#### 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.

### § 8137. State control of operations

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.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 503, §5037; amended Pub. L. 98-528, title I, §105(5), Oct. 19, 1984, 98 Stat. 2690; renumbered §8137, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238.)

#### 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".

### § 8138. Treatment of certain health facilities as State homes

(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.