

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.

(Added Pub. L. 96-22, title III, §301(a), June 13, 1979, 93 Stat. 55, §5002; amended Pub. L. 99-576, 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).

#### EFFECTIVE DATE

Section effective Oct. 1, 1979, but not applicable 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 a note under section 8101 of this title.

### § 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 facil-

ity) 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.

(e)(1) In the case of any super construction project, the Secretary shall enter into an agreement with an appropriate non-Department Federal entity to provide full project management services for the super construction project, including management over the project design, acquisition, construction, and contract changes.

(2) An agreement entered into under paragraph (1) with a Federal entity shall provide that the Secretary shall reimburse the Federal entity for all costs associated with the provision of project management services under the agreement.

(3) In this subsection, the term “super construction project” means a project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than \$100,000,000.

(f) To the maximum extent practicable, the Secretary shall use industry standards, standard designs, and best practices in carrying out the construction of medical facilities.

(g) The Secretary shall ensure that each employee of the Department with responsibilities, as determined by the Secretary, relating to the infrastructure construction or alteration of medical facilities, including such construction or alteration carried out pursuant to contracts or agreements, undergoes a program of ongoing professional training and development. Such program shall be designed to ensure that employees maintain adequate expertise relating to industry standards and best practices for the acquisition of design and construction services. The Secretary may provide the program under this subsection directly or through a contract or agreement with a non-Federal entity or with a non-Department Federal entity.

(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; Pub. L. 114-58, title V, §502(a), Sept. 30, 2015, 129 Stat. 537; Pub. L. 114-315, title VIII, §801(a), Dec. 16, 2016, 130 Stat. 1590.)

## AMENDMENTS

2016—Subsecs. (f), (g). Pub. L. 114-315 added subsecs. (f) and (g).

2015—Subsec. (e). Pub. L. 114-58 added subsec. (e).

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).

## EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-58, title V, §502(b), Sept. 30, 2015, 129 Stat. 538, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to the following:

“(1) The medical facility construction project in Denver, Colorado, specified in section 2 of the Construction Authorization and Choice Improvement Act (Public Law 114-19; 129 Stat. 215).

“(2) Any super construction project (as defined in section 8103(e)(3) of title 38, United States Code, as added by subsection (a)) that is authorized on or after the date of the enactment of this Act [Sept. 30, 2015].”

## EFFECTIVE DATE

Section effective Oct. 1, 1979, but not applicable 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 a note under section 8101 of this title.

## COMMUNITIES HELPING INVEST THROUGH PROPERTY AND IMPROVEMENTS NEEDED FOR VETERANS

Pub. L. 114-294, Dec. 16, 2016, 130 Stat. 1504, provided that:

## “SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Communities Helping Invest through Property and Improvements Needed for Veterans Act of 2016’ or the ‘CHIP IN for Vets Act of 2016’.

## “SEC. 2. PILOT PROGRAM ON ACCEPTANCE BY THE DEPARTMENT OF VETERANS AFFAIRS OF DONATED FACILITIES AND RELATED IMPROVEMENTS.

## “(a) PILOT PROGRAM AUTHORIZED.—

“(1) IN GENERAL.—Notwithstanding sections 8103 and 8104 of title 38, United States Code, the Secretary of Veterans Affairs may carry out a pilot program under which the Secretary may accept donations of the following property from entities described in paragraph (2):

“(A) Real property (including structures and equipment associated therewith)—

“(i) that includes a constructed facility; or

“(ii) to be used as the site of a facility constructed by the entity.

“(B) A facility to be constructed by the entity on real property of the Department of Veterans Affairs.

“(2) ENTITIES DESCRIBED.—Entities described in this paragraph are the following:

“(A) A State or local authority.

“(B) An organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and is exempt from taxation under section 501(a) of such Code [26 U.S.C. 501(a)].

“(C) A limited liability corporation.

“(D) A private entity.

“(E) A donor or donor group.

“(F) Any other non-Federal Government entity.

“(3) LIMITATION.—The Secretary may accept not more than five donations of real property and facility improvements under the pilot program and as described in this section.

“(b) CONDITIONS FOR ACCEPTANCE OF PROPERTY.—The Secretary may accept the donation of a property described in subsection (a)(1) under the pilot program only if—

“(1) the property is—

“(A) a property with respect to which funds have been appropriated for a Department facility project; or

“(B) a property identified as—

“(i) meeting a need of the Department as part of the long-range capital planning process of the Department; and

“(ii) the location for a Department facility project that is included on the Strategic Capital Investment Planning process priority list in the most recent budget submitted to Congress by the President pursuant to section 1105(a) of title 31, United States Code; and

“(2) an entity described in subsection (a)(2) has entered into or is willing to enter into a formal agreement with the Secretary in accordance with subsection (c) under which the entity agrees to independently donate the real property, improvements, goods, or services, for the Department facility project in an amount acceptable to the Secretary and at no additional cost to the Federal Government.

“(c) REQUIREMENT TO ENTER INTO AN AGREEMENT.—

“(1) IN GENERAL.—The Secretary may accept real property and improvements donated under the pilot program by an entity described in subsection (a)(2) only if the entity enters into a formal agreement with the Secretary that provides for—

“(A) the donation of real property and improvements (including structures and equipment associated therewith) that includes a constructed facility; or

“(B) the construction by the entity of a facility on—

“(i) real property and improvements of the Department of Veterans Affairs; or

“(ii) real property and improvements donated to the Department by the entity.

“(2) CONTENT OF FORMAL AGREEMENTS.—With respect to an entity described in subsection (a)(2) that seeks to enter into a formal agreement under paragraph (1) of this subsection that includes the construction by the entity of a facility, the formal agreement shall provide for the following:

“(A) The entity shall conduct all necessary environmental and historic preservation due diligence, shall comply with all local zoning requirements (except for studies and consultations required of the Department under Federal law), and shall obtain all permits required in connection with the construction of the facility.

“(B) The entity shall use construction standards required of the Department when designing, repairing, altering, or building the facility, except to the extent the Secretary determines otherwise, as permitted by applicable law.

“(C) The entity shall provide the real property, improvements, goods, or services in a manner described in subsection (b)(2) sufficient to complete the construction of the facility, at no additional cost to the Federal Government.

“(d) NO PAYMENT OF RENT OR USAGE FEES.—The Secretary may not pay rent, usage fees, or any other amounts to an entity described in subsection (a)(2) or any other entity for the use or occupancy of real property or improvements donated under this section.

“(e) FUNDING.—

“(1) FROM DEPARTMENT.—

“(A) IN GENERAL.—The Secretary may not provide funds to help the entity finance, design, or con-

struct a facility in connection with real property and improvements donated under the pilot program by an entity described in subsection (a)(2) that are in addition to the funds appropriated for the facility as of the date on which the Secretary and the entity enter into a formal agreement under subsection (c) for the donation of the real property and improvements.

“(B) TERMS AND CONDITIONS.—The Secretary shall provide funds pursuant to subparagraph (A) under such terms, conditions, and schedule as the Secretary determines appropriate.

“(2) FROM ENTITY.—An entity described in subsection (a)(2) that is donating a facility constructed by the entity under the pilot program shall be required, pursuant to a formal agreement entered into under subsection (c), to provide other funds in addition to the amounts provided by the Department under paragraph (1) that are needed to complete construction of the facility.

“(f) APPLICATION.—An entity described in subsection (a)(2) that seeks to donate real property and improvements under the pilot program shall submit to the Secretary an application to address needs relating to facilities of the Department, including health care needs, identified in the Construction and Long-Range Capital Plan of the Department, at such time, in such manner, and containing such information as the Secretary may require.

“(g) INFORMATION ON DONATIONS AND RELATED PROJECTS.—

“(1) IN GENERAL.—The Secretary shall include in the budget submitted to Congress by the President pursuant to section 1105(a) of title 31, United States Code, information regarding real property and improvements donated under the pilot program during the year preceding the submittal of the budget and the status of facility projects relating to that property.

“(2) ELEMENTS.—Information submitted under paragraph (1) shall provide a detailed status of donations of real property and improvements conducted under the pilot program and facility projects relating to that property, including the percentage completion of the donations and projects.

“(h) BIENNIAL REPORT OF COMPTROLLER GENERAL OF THE UNITED STATES.—Not less frequently than once every 2 years until the termination date set forth in subsection (i), the Comptroller General of the United States shall submit to Congress a report on the donation agreements entered into under the pilot program.

“(i) TERMINATION.—The authority for the Secretary to accept donations under the pilot program shall terminate on the date that is 5 years after the date of the enactment of this Act [Dec. 16, 2016].

“(j) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of the Secretary to enter into other arrangements or agreements that are authorized by law and not inconsistent with this section.”

#### DESIGNATION OF CONSTRUCTION AGENT FOR CERTAIN CONSTRUCTION PROJECTS BY DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 114-92, div. A, title X, §1096, Nov. 25, 2015, 129 Stat. 1020, provided that:

“(a) IN GENERAL.—The Secretary of Veterans Affairs shall seek to enter into an agreement subject to subsections (b), (c), and (e) of section 1535 of title 31, United States Code, with the Army Corps of Engineers or another entity of the Federal Government to serve, on a reimbursable basis, as the construction agent for the construction, alteration, or acquisition of any medical facility of the Department of Veterans Affairs specifically authorized by Congress after the date of the enactment of this Act [Nov. 25, 2015] that involves a total expenditure of more than \$100,000,000, excluding any acquisition by exchange.

“(b) AGREEMENT.—Under the agreement entered into under subsection (a), the construction agent shall pro-

vide design, procurement, and construction management services for the construction, alteration, and acquisition of medical facilities of the Department."

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)(1) 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