

**HEALTH CARE RESOURCES (HCR) CONTRACTING – BUYING
TITLE 38 U.S.C. 8153**

- 1. REASON FOR ISSUE:** To revise and replace the Department of Veterans Affairs (VA) Directive 1663 issued August 10, 2006.
- 2. SUMMARY OF CONTENTS:** This Directive sets forth revised policies and responsibilities for implementing and managing HCR contracts under Title 38 U.S.C. Sections 8151-8153. This Directive:
 - a. Relocates contract processes to the Medical Sharing Affiliate Office (MSO) electronic SharePoint site and Veterans Health Administration (VHA) Procurement Manual, VHA Procurement and Logistics Office (10NA2).
 - b. Defines 38 U.S.C. 8153 when buying HCR.
 - c. Clarifies buying HCR under The Veterans Access, Choice, and Accountability Act (VACAA) of 2014.
- 3. RESPONSIBLE OFFICE:** VHA Procurement and Logistics Office.
- 4. RELATED HANDBOOKS:** VHA Handbook 1660.03, *Conflict of Interest for the Aspects of Contracting for Sharing of Health-Care Resources (HCR)* and VHA Handbook 1660.01, *Health Care Resources Sharing Authority – Selling*.
- 5. RESCISSION:** This is a revision to and replacement of a previous directive with same name and number, dated August 10, 2006.

CERTIFIED BY:

**BY THE DIRECTION OF THE
SECRETARY OF VETERANS AFFAIRS:**

/s/
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Assistant Secretary
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/s/
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**HEALTH CARE RESOURCES (HCR) CONTRACTING – BUYING
TITLE 38 U.S.C. 8153**

1. **PURPOSE.** This Department of Veterans Affairs (VA) Directive 1663 implements the VA HCR sharing authority under Title 38 U.S.C. Sections 8151-8153. This Directive pertains to the acquisition of HCR consisting of hospital care and medical services as defined in 38 U.S.C. 1701. VA may enter into non-competitive contracts with affiliated educational institutions (as defined in 38 U.S.C. 7302) and their related health care entities or other related health care entities to include blood banks, organ banks, and research centers to acquire hospital care and medical services as well as the use of medical equipment, space or research. The educational affiliation relationships as defined in 38 U.S.C. 7302 serve as the statutory foundation to authorities contained in 38 U.S.C. 8151-8153. Besides providing additional flexibility in the acquisition of services, the statute expands the opportunity for VA health care facilities to sell services and generate revenue, thereby maintaining and expanding services to Veterans. Related guidance for selling services may be found in Veterans Health Administration (VHA) Directive 1660.01, *Health Care Resources Sharing Authority – Selling*.
2. **POLICY.**
 - a. The term “health care resources” is used with the same meaning as assigned in 38 U.S.C. 8152 and includes hospital care and medical services. Notification of direct patient care requirements that will require the award of contracts shall be provided to the Head of Contracting Activity (HCA) and Medical Sharing Affiliate Office (MSO) (competitive and non-competitive) as provided in the VHA Procurement Manual (PM). MSO conducts and coordinates reviews with Patient Care Services (PCS), National Surgery Office (NSO), and Office of General Counsel (OGC); the Contracting Officer (CO) is responsible for incorporating all changes required. All other HCR contracts must adhere to the guidance found in this Directive and are subject to the VHA PM where applicable. This process allows safeguards to assist the clinical program facility and contracting office in validating policy requirements and ensuring that appropriate business decisions are made to comply with policy.
 - b. When a qualified clinician cannot be recruited or it is determined that recruitment of VA staff is not appropriate in the specific circumstance, the Medical Center Director must first consider resources available within the respective network or within VA or military treatment facilities. If capacity is not found, several additional options are available including referring Veterans for Community Care under the Veterans Choice Program, under 38 U.S.C. 8153 or other authorized community care arrangements.
 - c. All HCR contracts are for clinical services provided at VA must state that credentialing and privileging is to be done in accordance with the provisions of VHA Handbook 1100.19, *Credentialing and Privileging* (includes contracted Community-Based Outpatient Clinics (CBOC)).

- d. As authorized by 38 U.S.C. 7302, VA is committed to developing and carrying out a program of education and training of health personnel which includes various physician resident training programs as a part of its statutory mission. The Accreditation Council for Graduate Medical Education (ACGME) requires the supervising attending physician staff for resident physicians be approved by the Program Director at the sponsoring institution. ACGME defines supervising “faculty” as “any individuals who have received a formal assignment to teach resident physicians.” Given the requirement for authorized supervisors for residents and students, it is common for VA to contract with academic affiliates when training programs exist. If services provided include resident supervision, the contract requires compliance with VHA Handbook 1400.01, *Resident Supervision*.
- e. Sole source contracts to affiliated educational institutions or other related health care entities affiliated with VA (as defined in 38 U.S.C. 7302) shall be the preferred method used to procure HCR services when services to be provided to the VA include duties relating to a professional health residency program within the area of the services contracted or when the affiliate has the capacity to deliver health care resources in a manner that represents best value to the government. HCR are defined in paragraph 4(c) and include services beyond medical specialties. In those instances when the authority of 38 U.S.C. 8153 is used in sole source affiliate contracts for the use of medical equipment, space, home oxygen services, transcription services, grounds maintenance, laundry services, or other services that are non-clinical in nature, the concept must be processed for approval by MSO prior to solicitation. Sole source affiliate contracts for HCR services, which are not associated with a residency program, must demonstrate that the award would represent best value to the government.
- f. The Veterans Access, Choice, and Accountability Act (VACAA) of 2014 (Public Law 113-146), August 7, 2014 provided for the Veterans Choice Program (VCP) to send Veterans to the community for care when they meet certain administrative eligibility. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, (Public Law 114-41) required VA to consolidate care programs to systematically improve the operational structure for all VA Community Care. VCP is Veterans that have a 30 day or longer wait for care or reside more than 40 miles from a VA medical facility with a full time primary care physician. Should affiliated educational institutions or other related health care entities affiliated with VA elect to become a Choice provider (services provided must not include participation of residents paid by VA funds), the rates required by VCP are no more than the Centers for Medicare and Medicaid Services (CMS) rates. However, exceptions include care provided in Alaska, where the Alaska Fee Schedule for professional services is used for payment, the Maryland Waiver, and highly rural areas. The Deputy Under Secretary for Health for Community Care is responsible for community care programs, including VCP.

- g. Interim Contract Authority (ICA) is only allowable when buying HCR either with educational institutions or other health care entities affiliated with VA as an interim measure to complete the contracting cycle for long-term needs, in accordance with this Directive. ICA approval applies to contracts with educational institutions or other health care entities affiliated with VA, to include contracted CBOCs. ICA only permits the CO to contract for a limited time period without normal central office procurement reviews processed through MSO. All acquisition regulations (Federal Acquisition Regulation (FAR) and VA Acquisition Regulation (VAAR)) apply to the proposed interim contract, including contract performance monitoring and conflict of interest (COI) provisions.
 - h. MSO is responsible for preparing an annual report to Congress on all VA activities carried out under the HCR sharing program, as required by 38 U.S.C. Section 8153 (g). The annual report is prepared based on information provided in the VA electronic contract management system (eCMS) and all other data repository maintained by the MSO. To ensure accurate reporting information, each contracting activity is responsible for ensuring all obligated awards for each fiscal year for all HCR contracts under 38 U.S.C. 8153 are recorded in the eCMS and Federal Procurement Data System-Next Generation data collection systems.
- 3. RESPONSIBILITIES.** The acquisition of HCR services under this Directive is a collaborative effort. This section identifies major responsibilities of key roles involved in the HCR buying process.
- a. **Clinical Service Chief (CSC).** The CSC identifies health care needs and makes recommendations about the feasibility of directly hiring staff; provides justification for use of Full-Time Equivalent/Fixed Hourly Rate HCR contract or use of mixed reimbursement methodologies for services provided; provides justification for use of per-procedure based HCR contracts or mixed reimbursement methodologies for services performed at the medical center by staff of an affiliated educational institution or other related health care entity affiliated with VA under a HCR contract; ensures all appropriate VA quality standards are in place, including a Quality Assurance Surveillance Plan (QASP) and Performance Work Statement (PWS)); and ensures COI issues are identified and reviewed as defined in VHA Handbook 1660.03, *Conflict of Interest for the Aspects of Contracting for Sharing of Health-Care Resources (HCR)*.
 - b. **Contracting Officer (CO).** As provided by the FAR, CO's, as members of the Acquisition Team, are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.
 - c. **Head of Contracting Activity (HCA).** The HCA has been delegated broad authority regarding acquisition functions and has overall responsibility for managing contracting activity associated with this Directive.

- d. **Medical Center Chief of Staff (COS)**. The Medical Center COS conducts a needs assessment to support acquisition of HCR supplies and/or services; provides due diligence and factual support for requests for competitive and non-competitive procurements with affiliated educational institutions, or other related health care entities affiliated with VA; ensures all appropriate VA quality assurance standards are in place; implements appropriate methodologies in the medical center to monitor the quality of patient care and ensures COI issues are identified and reviewed as defined in VHA Handbook 1660.03.
- e. **Medical Center Director**. The Medical Center Director submits a request and justification for using competitive or non-competitive procurements with affiliated educational institutions or other related health care entities affiliated with VA to the Veterans Integrated Service Network (VISN) Director; ensures all VA employees involved in the procurement process do not have a COI in accordance with VHA Handbook 1660.03; ensures Medical Center COS and Medical and Surgical Service Chiefs receive a copy of VHA Handbook 1660.03 and completes COI acknowledgement in accordance with policy; and approves waivers to the general rule that part-time VA physicians under dual roles not provide the same services under HCR contracts for which they receive VA pay under special circumstances, if applicable.
- f. **Medical Sharing Affiliate Office (MSO)**. MSO provides administrative oversight and guidance when supplies and services are being acquired or purchased under HCR contracts; conducts, processes and approves HCR procurement reviews through PCS, NSO, and the OGC; and ensures HCR guidance pertaining to processes (including sharing agreements) is maintained by MSO on the MSO SharePoint site and VHA PM.
- g. **Office of Academic Affiliation (OAA)**. OAA serves as a consultant to MSO on matters related to education and training to education and training policies and validates the existence of professional health residency programs at a particular VA medical center. OAA may also provide assistance when competitive or non-competitive HCR contracts are used in a specialty or service with or without a physician residency program. In cases where competing a requirement may have a detrimental impact on an educational program, the CO may request assistance (through MSO) and use standardized criteria to evaluate potential impact on the specific educational program, VA staffing or affiliation effectiveness.
- h. **Office of General Counsel (OGC)**. The OGC provides legal advice and counsel to the HCA, MSO, CO, and other members of the Acquisition Team. OGC conducts legal sufficiency reviews of procurement actions as provided by VA guidance and VHA PM.
- i. **Office of Inspector General (OIG)**. The CO may request that the OIG provide field pricing verification assistance in determining or validating the actual costs of the affiliated educational institution or other entities affiliated with VA to provide

services required by VA. The CO must submit contracts valued at \$400,000 annually to the OIG. To provide pricing verification assistance, the OIG shall review supporting documents, accounting records, and any other pertinent data (to include interviewing representatives). Nothing in this section shall limit the authority of the OIG under section 6 of the Inspectors General Act of 1978 (5 U.S.C. App. 3, § 6) reviewing contracts awarded under the authority of 38 U.S.C. § 8153, irrespective of value.

- j. **Veterans Integrated Service Network (VISN) Director.** The VISN Director or VISN level designee approves all competitive or non-competitive HCR contracts to include sole source justifications with affiliated educational institutions or other related health care entities affiliated with VA; identifies VISN clinical personnel to serve on Acquisition Teams for other VISNs when COI preclude participation by the other VISN's medical personnel; and performs due diligence that the medical center and network staff have complied with this Directive.
- k. **VHA Procurement and Logistics Office (P&LO).** The VHA P&LO provides administrative oversight of MSO, VHA PM, VHA network contracting offices, and establishes processes. All acquisition guidance related to 38 U.S.C. 8153 are located in the VHA PM.

4. DEFINITIONS.

- a. **Affiliated Institution.** The term "Affiliated Institution" shall mean an academic educational institution or other health care entity affiliated with the VA in accordance with 38 U.S.C. 7302, and shall include medical practice groups and other entities associated with such academic institution.
- b. **Conflict of Interest (COI).** The term "Conflict of Interest" as used in this Directive refers to conflicts as defined by VHA Handbook 1660.03. COI requirements cannot be waived. The CO must ensure all COI issues are resolved before members can participate on an Acquisition Team in accordance with applicable law, regulations and policy (required for all competitive or non-competitive HCR contracts).
 - i. **Statutory Prohibitions.** Provisions in Title 18 U.S.C. 208(a) of the United States criminal code prohibit an employee from participating in the procurement of a HCR commercial contract if the employee has certain relationships with the non-VA parties involved in the procurement (see VHA Handbook 1660.03).
 - ii. **VHA Policy on COI.** VHA Handbook 1660.03 provides definitive guidance on how the criminal code provisions limit VA employees' activities with respect to sharing contracts, and delineate situations where facilities must seek guidance from OGC counsel or OGC ethics staff. In accordance with VHA Handbook 1660.03, the Medical Center Director must ensure all facility VA employees potentially involved in any procurement processes (i.e.,

- development of PWS, participation on the technical evaluation panel) receive a copy of VHA Handbook 1660.03 and complete and sign an acknowledgement. The Conflict of Interest acknowledgement must be signed and placed in the official HCR procurement file.
- iii. **VA Employees Performing Services.** The United States criminal code under 18 U.S.C. 208(a) prohibits the supplementation of an employee's salary for duties the employee performs as a Federal employee. As a general rule, part-time VA physicians should not provide the same services under contract for which they receive VA pay. However, under special circumstances, a waiver may be approved by the Medical Center Director in consultation with OGC and OGC Ethics Officer.
 - iv. **Organizational COI Prohibition on Contract Employees.** In addition to the restrictions placed on employees by the criminal code and VHA Handbook 1660.03, Part 9.5 of the FAR provides information about situations that could potentially create organizational consultant conflicts of interest. The CO shall consult with OGC or the Ethics Officer if medical care professionals employed by the affiliated educational institution are involved in the acquisition process to ensure any organizational COI is dealt with properly.
 - v. **Collaboration among VA Facilities.** In instances where COI prevents participation of key clinical personnel on an Acquisition Team for a particular medical facility contract, the Medical Center COS or MSO management shall assist in identifying clinical personnel at another VA medical facility or representation from VA PCS who can serve on the Acquisition Team.
 - vi. **Individual Certification regarding COI.** The CO shall require each member of the Acquisition Team or the Integrated Product Team to sign a disclosure statement certifying the member has no financial relationships with the affiliated educational institution or other related health care entity with VA and such person has disclosed the relationship to OGC or the Ethics Office and obtained an opinion ensuring the relationship does not preclude participation on the Acquisition Team. **NOTE:** Having an unpaid faculty appointment with the affiliated educational institution or other related health care entity with VA does not, in and of itself, preclude participation on an Acquisition Team. The CO should advise each member of the Acquisition Team to review VHA Handbook 1660.03 for further information. Questions about conflict of interest should be referred to the OGC and/or OGC Ethics Officer. VA must use the certification template found on the MSO SharePoint or other appropriate Department template.
- c. **Health Care Resources.** The term "health care resources" involves the provision of a broad range of health care resources, including any and all medical specialties, to include: radiology, cardiovascular surgery, etc. Health care resources also refer to health care support and administrative resources, the use of medical equipment, space, and home oxygen. Health care support and

administrative resources include those services, apart from direct patient care, determined necessary for the operation of VA facilities. Health care support resources serve medically-related purposes (e.g., biomedical equipment repair, patient transport, etc.). Administrative resources include services not unique to the provision of medical care, but deemed necessary to support the specific health care resource procurement action (e.g., transcription services, grounds maintenance, laundry, etc.).

- d. **Interim Contract Authority (ICA)**. The term "Interim Contract" refers to health care resources contracts entered into in accordance with the policies and procedures set forth in this Directive. This only applies to contracts with educational institutions or other health care entities affiliated with VA, to include contracted CBOCs.
- e. **Procurement Reviews, Certifications and Approvals**. The term "Procurement Reviews, Certifications and Approvals" refers to reviews, certifications and approvals that MSO conducts and coordinates with PCS, NSO, and OGC. The CO is responsible for incorporating all changes required by MSO, PCS, NSO and OGC.

f. **Sharing Authority**

§ 8151. Statement of congressional purpose

§ 8152. Definitions

§ 8153. Sharing of health care resources

Full text of Title 38 U.S. Code can be located online at:

<http://uscode.house.gov/search/criteria.shtml>

g. **Veterans Access, Choice and Accountability Act of 2014 ("Choice Act")**.

Full text of VACAA can be located online at:

<http://www.va.gov/opa/choiceact/documents/Choice-Act-Summary.pdf>

5. REFERENCES.

- a. Title 18 U.S.C. 203, 205 and 208
- b. Title 38 U.S.C. Section 1701
- c. Title 38 U.S.C. Section 7302
- d. Title 38 U.S.C. Sections 8151-8153
- e. The Veterans Access, Choice, and Accountability Act (VACAA) of 2014

- f. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015
- g. Federal Acquisition Regulation
- h. Veterans Affairs Acquisition Regulation
- i. 42 CFR 415.170
- j. 38 CFR 17.240
- k. VA Handbook 5005
- l. VHA Handbook 1100.19
- m. VHA Handbook 1400.01
- n. VHA Handbook 1400.10
- o. VHA Handbook 1660.01
- p. VHA Handbook 1660.03
- q. VHA Information Bulletin: Review of All Radiation Oncology Contracting Requirements by Medical Sharing Office and Office of Patient Care Services, dated December 16, 2013.
- r. VHA Memorandum of all Emergency Medicine Contracts for Services by Medical Sharing Office and Office of the Assistant Deputy Under Secretary for Health for Patient Care Services, dated December 22, 2014.
- s. VHA Procurement Manual