

“(A) is agreed to by the local redevelopment authority with respect to the facility; and

“(B) provides for the reuse or redevelopment of the real property and personal property of the facility that is available for such reuse and redevelopment as a result of the closure or realignment of the facility.

“(10) The term ‘Secretary’ means the Secretary of Veterans Affairs.

“(11) The term ‘tribal organization’ has the meaning given such term in section 3765 of title 38, United States Code.”

TRANSFER OF REAL PROPERTY DEEMED DESCRIBED IN
BUDGET FOR FISCAL YEAR 1989

Pub. L. 100-322, title IV, §421(a)(2), May 20, 1988, 102 Stat. 553, provided that any proposed transfer of real property described in subsec. (a)(2)(B) of this section that was described in a report submitted to Committees on Veterans' Affairs of Senate and House of Representatives by Administrator not later than 30 days after May 20, 1988, was to be deemed for purposes of subsec. (a)(2)(A) of this section to have been described in the President's budget for fiscal year 1989.

§ 8123. Procurement of prosthetic appliances

The Secretary may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the Secretary may determine to be proper, without regard to any other provision of law.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1254, §5013; amended Pub. L. 94-581, title II, §210(e)(8), Oct. 21, 1976, 90 Stat. 2865; renumbered §5023, Pub. L. 96-22, title III, §301(b)(1), June 13, 1979, 93 Stat. 61; renumbered §8123, 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.)

Editorial Notes

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5023 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” in two places.

1976—Pub. L. 94-581 substituted “the Administrator” for “he”.

Statutory Notes and Related Subsidiaries

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.

§ 8124. Grant of easements in Government-owned lands

The Secretary, whenever the Secretary deems it advantageous to the Government and upon such terms and conditions as the Secretary deems advisable, may grant on behalf of the United States to any State, or any agency or political subdivision thereof, or to any public-service company, easements in and rights-of-way over lands belonging to the United States which are under the Secretary's supervision and control. Such grant may include the use of such easements or rights-of-way by public utilities to the extent authorized and under the conditions

imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the Secretary deems necessary or desirable, is hereby ceded to the State in which the land is located. The Secretary may accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as the Secretary may deem necessary or desirable over the land so acquired. Any such easement or right-of-way shall be terminated upon abandonment or nonuse of the same and all right, title, and interest in the land covered thereby shall thereupon revert to the United States or its assignee.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1254, §5014; amended Pub. L. 94-581, title II, §210(e)(9), Oct. 21, 1976, 90 Stat. 2865; renumbered §5024, Pub. L. 96-22, title III, §301(b)(1), June 13, 1979, 93 Stat. 61; renumbered §8124, 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.)

Editorial Notes

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 5024 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing and “Secretary's” for “Administrator's”.

1976—Pub. L. 94-581 substituted “the Administrator” for “he” wherever appearing and “under the Administrator's supervision” for “under his supervision”.

Statutory Notes and Related Subsidiaries

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.

§ 8125. Procurement of health-care items

(a) Except as provided in subsections (b) and (c) of this section, the Secretary may not procure health-care items under local contracts.

(b)(1) A health-care item for use by the Department may be procured under a local contract if—

(A) the procurement is within the limits prescribed in paragraph (3) of this subsection; and

(B)(i) the item is not otherwise available to the Department medical center concerned,

(ii) procurement of the item by a local contract is necessary for the effective furnishing of health-care services or the conduct of a research or education program at a Department medical center, as determined by the director of the center in accordance with regulations which the Under Secretary for Health shall prescribe, or

(iii) procurement under a local contract is demonstrably more cost-effective for the item.

(2) In the case of the need for an emergency procurement of a health-care item, such item may be procured under a local contract, but no greater quantity of such item may be procured by a local contract than is reasonably necessary

to meet the emergency need and the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

(3)(A) Except as provided in subparagraphs (C) and (D) of this paragraph, not more than 20 percent of the total of all health-care items procured by the Department in any fiscal year (measured as a percent of the total cost of all such health-care items procured by the Department in that fiscal year) may be procured under local contracts.

(B) Local contracts for the procurement of health-care items shall, to the maximum extent feasible, be awarded to regular dealers or manufacturers engaged in the wholesale supply of such items.

(C) The Secretary may increase for a fiscal year the percentage specified in subparagraph (A) of this section to a percentage not greater than 30 percent if the Secretary, based on the experience of the Department during the two fiscal years preceding such fiscal year, determines that the increase and the amount of the increase are necessary in the interest of the effective furnishing of health-care services by the Department. The authority to increase such percentage may not be delegated.

(D) Items procured through an emergency procurement shall not be counted for the purpose of this paragraph.

(c) A provision of law that is inconsistent with subsection (a) or (b) of this section shall not apply, to the extent of the inconsistency, to the procurement of a health-care item for use by the Department.

(d) For the purposes of this section:

(1) The term "health-care item" includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65 or 66. Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73. Such term does not include perishable items.

(2) The term "local contract" means a contract entered into by a Department medical center for procurement of an item for use by that medical center.

(3) The term "emergency procurement" means a procurement necessary to meet an emergency need, affecting the health or safety of a person being furnished health-care services by the Department, for an item.

(Added Pub. L. 100-322, title IV, § 403(a)(1), May 20, 1988, 102 Stat. 543, § 5025; amended Pub. L. 100-687, div. B, title XV, § 1507(b), (c), Nov. 18, 1988, 102 Stat. 4136, 4137; renumbered § 8125, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 107-14, § 8(a)(15), June 5, 2001, 115 Stat. 35; Pub. L. 113-188, title XVII, § 1701, Nov. 26, 2014, 128 Stat. 2026.)

Editorial Notes

AMENDMENTS

2014—Subsecs. (d), (e). Pub. L. 113-188 redesignated subsec. (e) as (d) and struck out former subsec. (d) which required annual reports from the directors of Department medical centers and from the Secretary.

2001—Subsec. (d)(1). Pub. L. 107-14, § 8(a)(15)(A), struck out "(beginning in 1992)" after "each year".

Subsec. (d)(2). Pub. L. 107-14, § 8(a)(15)(B), struck out "(beginning in 1993)" after "each year".

Subsec. (d)(3). Pub. L. 107-14, § 8(a)(15)(C), struck out par. (3) which read as follows: "Not later than February 1 of each year from 1989 through 1992, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out this section during the preceding fiscal year. The first such report shall contain information showing the percentage (measured by cost) of the total of all health-care items procured by the Department during fiscal year 1988 that were procured through local contracts. The other reports under this paragraph shall contain information showing the percentage (measured by cost) of the total of all health-care items procured by the Department, and by each Department medical center, during the fiscal year covered by the report that were purchased through local contracts and, in the case of each medical center at which the percentage was greater than 20 percent, an explanation of the reasons why that occurred."

1992—Subsec. (b)(1)(B)(ii). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991—Pub. L. 102-40 renumbered section 5025 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in par. (3)(C).

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsec. (c). Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsecs. (d), (e). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

1988—Subsec. (d)(1). Pub. L. 100-687, § 1507(b)(1), inserted "(beginning in 1992)" after "of each year".

Subsec. (d)(2). Pub. L. 100-687, § 1507(b)(2), inserted "(beginning in 1993)" after "of each year".

Subsec. (d)(3). Pub. L. 100-687, § 1507(b)(3), added par. (3).

Subsec. (e)(1). Pub. L. 100-687, § 1507(c), substituted "65 or 66" for "65, 66, or 73" and inserted after first sentence "Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Administrator) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73."

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 100-322, title IV, § 403(b), May 20, 1988, 102 Stat. 545, as amended by Pub. L. 100-687, div. B, title XV, § 1507(a), Nov. 18, 1988, 102 Stat. 4136, provided that:

"(1) Subsections (a), (b)(1), and (b)(2) of section 5025 [now 8125] of title 38, United States Code (as added by subsection (a)), shall take effect one year after the date of the enactment of this Act [May 20, 1988].

"(2) Subsection (b)(3) of such section shall apply to health-care items procured for use by the Veterans' Administration [now Department of Veterans Affairs] after September 30, 1990."

MEDICAL SURGICAL PRIME VENDOR PROGRAM

Pub. L. 115-407, title VII, § 703, Dec. 31, 2018, 132 Stat. 5381, provided that:

“(a) VENDORS.—In procuring certain medical, surgical, and dental supplies or laboratory supplies for medical centers of the Department of Veterans Affairs, the Secretary of Veterans Affairs shall carry out the Medical Surgical Prime Vendor program, or successor program, in a manner that—

“(1) requires the Secretary to award contracts to multiple regional prime vendors instead of a single nationwide prime vendor; and

“(2) prohibits a prime vendor from solely designing the formulary of such supplies.

“(b) CLINICALLY DRIVEN SOURCING.—

“(1) EXPERTISE.—In carrying out the formulary of supplies under the Medical Surgical Prime Vendor program, or successor program, the Secretary shall ensure that each employee of the Department of Veterans Affairs who conducts formulary analyses or makes decisions with respect to including items on the formulary has medical expertise relevant to the items for which the employee conducts such analyses or makes such decisions.

“(2) LISTS.—Not later than 30 days after the date of the enactment of this Act [Dec. 31, 2018], and every six months thereafter with respect to any updates, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a list of each employee described in paragraph (1) and the relevant medical expertise of the employee, listed by the categories of items in the formulary described in such paragraph.”

STANDARDIZATION OF MEDICAL AND PHARMACEUTICAL ITEMS

Pub. L. 100-322, title IV, § 402, May 20, 1988, 102 Stat. 543, as amended by Pub. L. 100-687, div. B, title XV, § 1508, Nov. 18, 1988, 102 Stat. 4137, directed Administrator, not later than Oct. 1, 1989, to develop and fully implement an agency-wide plan for cost-effective standardization of health-care items procured by Veterans' Administration.

§ 8126. Limitation on prices of drugs procured by Department and certain other Federal agencies

(a) Each manufacturer of covered drugs shall enter into a master agreement with the Secretary under which—

(1) beginning January 1, 1993, the manufacturer shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer;

(2) with respect to each covered drug of the manufacturer procured by a Federal agency described in subsection (b) on or after January 1, 1993, that is purchased under depot contracting systems or listed on the Federal Supply Schedule, the manufacturer has entered into and has in effect a pharmaceutical pricing agreement with the Secretary (or the Federal agency involved, if the Secretary delegates to the Federal agency the authority to enter into such a pharmaceutical pricing agreement) under which the price charged during the one-year period beginning on the date on which the agreement takes effect may not exceed 76 percent of the non-Federal average manufacturer price (less the amount of any additional discount required under subsection (c)) during the one-year period ending one month before such date (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period are not available, during such period as the Secretary considers appropriate),

except that such price may nominally exceed such amount if found by the Secretary to be in the best interests of the Department or such Federal agencies;

(3) with respect to each covered drug of the manufacturer procured by a State home receiving funds under section 1741 of this title, the price charged may not exceed the price charged under the Federal Supply Schedule at the time the drug is procured; and

(4) unless the manufacturer meets the requirements of paragraphs (1), (2), and (3), the manufacturer may not receive payment for the purchase of drugs or biologicals from—

(A) a State plan under title XIX of the Social Security Act, except as authorized under section 1927(a)(3) of such Act,

(B) any Federal agency described in subsection (b), or

(C) any entity that receives funds under the Public Health Service Act.

(b) The Federal agencies described in this subsection are as follows:

(1) The Department.

(2) The Department of Defense.

(3) The Public Health Service, including the Indian Health Service.

(4) The Coast Guard.

(c) With respect to any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2), beginning on or after January 1, 1993, the manufacturer shall provide a discount in an amount equal to the amount by which the change in non-Federal price exceeds the amount equal to—

(1) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the last day of the month preceding the month during which the contract for the covered drug goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period as the Secretary considers appropriate); multiplied by

(2) the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last month of the period described in paragraph (1) and the last month preceding the month during which the contract goes into effect for which Consumer Price Index data is available.

(d) In the case of a covered drug of a manufacturer that has entered into a multi-year contract with the Secretary under subsection (a)(2) for the procurement of the drug—

(1) during any one-year period that follows the first year for which the contract is in effect, the contract price charged for the drug may not exceed the contract price charged during the preceding one-year period, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) during the 12-month period ending with the last month of such preceding one-year period for which Consumer Price Index data is available; and

(2) in applying subsection (c) to determine the amount of the discount provided with re-