

## HEALTH CARE RESOURCES SHARING AUTHORITY - SELLING

**1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) directive establishes policy and responsibilities regarding VHA entering into sharing agreements for the selling of VHA health care resources (HCR) with any health care provider, or other entity or individual. This directive contains changes to the policy and responsibilities established in VHA Handbook 1660.01, dated October 11, 2007.

**2. SUMMARY OF MAJOR CHANGES:** The following changes update the process to develop, execute, and administer selling sharing agreements. The major changes include:

a. Identifying the roles and responsibilities of the business team, to include the Contracting Officer (CO), Contracting Officer's Representative (COR), Medical Facility Director, Veterans Integrated Service Network (VISN) Director, Medical Sharing/Affiliate Office (MSO), Office of General Counsel (OGC), and VA Financial Services.

b. Providing additional instructions for processing selling sharing agreements, which include reviews of both the concept proposal and the draft selling sharing agreement.

c. Clarifying resources that may not be sold and entities to which resources may not be sold using the processes contained in this Directive, as well as types of agreements to which this directive does not apply.

**3. RELATED ISSUES:** VHA Directive 2011-035, VA Support for the Provision of Medications to Eligible Veterans in a State Veterans Nursing Home, or subsequent policy; VHA Directive 1820, Enhanced Sharing Use of Space Program.

**4. RESPONSIBLE OFFICE:** VHA Procurement and Logistics Office, Medical Sharing/Affiliate Office (MSO) is responsible for the content of this Directive. Questions may be referred to the MSO mail group at [VHA CO MSO GROUP](#).

**5. RESCISSIONS:** VHA Handbook 1660.01, dated October 11, 2007, is rescinded.

**6. RECERTIFICATION:** This VHA directive is scheduled for recertification on or before the last working day of June 2023. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

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Executive In Charge

**NOTE:** All references herein to VA and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.

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## HEALTH CARE RESOURCES SHARING AUTHORITY - SELLING

### 1. PURPOSE

This Veterans Health Administration (VHA) directive establishes policy and responsibilities regarding VHA entering into sharing agreements for the selling of VHA health care resources (HCR) with any health care provider, or other entity or individual, under the authority set forth at Title 38 United States Code (U.S.C.) Section 8153.

**AUTHORITY:** 38 U.S.C. Sections 8151 through 8153.

### 2. BACKGROUND

a. In accordance with 38 U.S.C. 8153 (also called the “sharing authority” in this directive), VHA may enter into sharing agreements for the selling of HCR with any health care provider, or other entity or individual, unless otherwise prohibited by law.

b. HCR includes hospital care and medical services (as those terms are defined in 38 U.S.C. 1701), services under 38 U.S.C. [1782](#) and [1783](#), any other health-care service, and any health-care support or administrative resource. 38 U.S.C. 8152(1). This VHA directive applies to sharing agreements for the selling of HCR including but not limited to those categories of HCR discussed in paragraphs 7 and 8.

### 3. DEFINITIONS

a. **Business Team.** A business team is a team established when an opportunity to sell a Department of Veterans Affairs (VA) health care resource is being considered. Membership of the team is at the discretion of the VA medical facility Director. The team consists of appropriate membership to coordinate the activity.

b. **Certification by VA Medical Facility Director.** Prior to selling HCR, the VA medical facility Director must execute a written certification attesting that: (1) Veterans will receive priority for services under the sharing agreement (i.e., the selling sharing agreement will not result in the diminution of existing levels of services to Veterans); (2) the selling sharing agreement is necessary to maintain an acceptable level and quality of service to Veterans or will result in improvement of services to Veterans; and (3) the HCR specified in the selling sharing agreement are not, or would not be, used to their maximum effective capacity. A sample certification is included on the [MSO Customer Resource Center](#) SharePoint. **NOTE:** *This is an internal VA website that is not available to the public. If there is difficulty in accessing this site please call 615-653-3227 for assistance.*

c. **Concept Proposal.** A concept proposal contains the following information: the requesting facility and Veterans Integrated Service Network (VISN); the health care resources to be sold; the sharing entity, terms of the sharing agreement, costing methodology, and estimate for total revenue to be generated; security considerations; and a narrative identifying how Veterans will benefit.

d. **Full Cost.** Full cost has the meaning established in VA Financial Policies and Procedures, Volume XIII, Chapter 4, Charges and Full Cost Recovery, or successor policy. As established in that policy, the Federal Accounting Standards Advisory Board (FASAB), Statement of Federal Financial Accounting Standards (SFFAS) No. 4, Managerial Cost Accounting Concepts and Standards for the Federal Government, defines the full cost of an output produced by a responsibility segment as the sum of the costs of: (1) resources consumed by the segment that directly or indirectly contribute to the output, and (2) identifiable supporting services provided by other responsibility segments within the reporting entity and by other reporting entities. Full cost includes: direct costs; indirect costs; corporate overhead; depreciation of general property, plant and equipment, if applicable; and other (e.g., other areas for which DSS does not have unit cost data). Direct costs may include labor, products, and equipment. Indirect costs typically include labor overhead, material overhead, and general and administrative (G&A) costs.

e. **Medical Sharing/Affiliate Office.** VA Medical Sharing/Affiliate Office (MSO) provides oversight on procedures and reviews and is the approving official for selling sharing agreements.

f. **Rapid Response Team.** The Rapid Response Team (RRT) is comprised of MSO and the Office of General Counsel (OGC). In reviewing a concept proposal, the RRT ensures the facility has an appropriate reimbursement scheme, is selling HCR in accordance with 38 U.S.C. 8153, and is not putting VA at risk.

g. **Reimbursement Rates.** Reimbursement rates are the payment rates specified in a selling sharing agreement that determine the revenue generated by selling all identified HCR. Reimbursement rates must be in the best interest of the Federal government and must be determined based upon an analysis of the full cost of the HCR. The rationale and justification for the reimbursement rate determination, including the costing methodology utilized, must be fully documented and included in the sharing agreement file. Facilities are encouraged to maximize revenue generated from the sale of HCR under this authority.

h. **Selling Sharing Agreement.** A selling sharing agreement is a contractual instrument providing the terms and conditions and other detailed information about the HCR (or use thereof) being sold by VA to a sharing entity under the sharing authority set forth at 38 U.S.C. 8153.

#### 4. POLICY

HCR may be offered to a sharing entity only if the HCR is within the scope of VA's authority, is authorized by law, and VA will receive revenue sufficient to recover the full cost of such HCR.

#### 5. RESPONSIBILITIES

a. **VA Office of Financial Services.** The Office of Financial Services shall be responsible for auditing all selling sharing agreements.

b. **Office of General Counsel.** OGC shall be responsible for:

- (1) Participating as a member of the Rapid Response Team.
- (2) Performing legal review of all concept proposals, regardless of estimated total revenue.
- (3) Performing legal review of all draft selling sharing agreements, regardless of estimated total revenue.

c. **Medical Sharing/Affiliate Office.** MSO shall be responsible for:

- (1) Providing oversight and guidance as the approving official for selling sharing agreements.
- (2) Reviewing and processing all selling sharing agreements, regardless of estimated total revenue.
- (3) Processing concept proposal review requests through the Rapid Response Team.
- (4) Performing written technical reviews of draft selling sharing agreements with estimated total revenue of \$500,000 or more.
- (5) Preparing the annual congressional reports required under 38 U.S.C. 8153, which must include identification of the revenue generated by selling sharing agreements.

d. **Contracting Officer.** A contracting officer (CO) who is duly appointed and authorized to enter into and administer selling sharing agreements on behalf of VA shall be responsible for:

- (1) Reviewing for sufficiency each concept proposal and Certification by VA Medical Facility Director.
- (2) Reviewing for sufficiency the rationale and justification for all reimbursement rate determinations.
- (3) Assessing whether any potential conflicts of interest exist and consulting with OGC upon identification of any potential conflicts of interest. This assessment must be conducted prior to executing a selling sharing agreement and should take place as early in the process as practicable.
- (4) Coordinating document review with MSO/Rapid Response Team and incorporating all changes required by the legal and technical reviews before a selling sharing agreement is executed.

(5) Executing, administering, modifying, and cancelling selling sharing agreements, and otherwise taking all actions affecting the terms of such selling sharing agreements or the rights of VA or a sharing entity under the terms of such agreements.

(6) Issuing written designations for “Contracting Officer’s Representatives (CORs)” selected by VA medical facility Directors and deemed appropriate by the CO to assist with technical monitoring and administration of executed selling sharing agreements. Each such designation must be signed by the CO and shall define the scope and limitations of the COR’s delegated authority. COs shall not delegate authority to CORs to execute, modify, or cancel selling sharing agreements, take any action affecting the terms of a selling sharing agreement or the rights of VA or a sharing entity under the terms of a selling sharing agreement, or otherwise bind the Federal government to take or not take some action. The CO shall provide a copy of the designation to the sharing entity after notice of award.

(7) Performing an annual review of each selling sharing agreement to validate reimbursement rates in accordance with VA Financial Policies and Procedures, Volume XIII, Chapter 4, Charges and Full Cost Recovery, or successor policy.

e. **Veterans Integrated Service Network Director.** The VISN Director shall be responsible for providing review and concurrence on the Certification by VA Medical Facility Director memorandum for all concept proposals.

f. **VA Medical Facility Director.** The VA medical facility Director shall be responsible for:

(1) Ensuring the facility’s compliance with this VHA Directive.

(2) Certifying that:

(a) Veterans will receive priority for services under the sharing agreement (i.e., the sharing agreement will not result in the diminution of existing levels of services to Veterans);

(b) The selling sharing agreement is necessary to maintain an acceptable level and quality of service to Veterans or will result in improvement of services to Veterans; and

(c) The HCR specified in the selling sharing agreement are not, or would not be, used to their maximum effective capacity.

(3) Ensuring compliance with the requirements outlined in this Directive; meeting all requirements of applicable law and policy; meeting all management responsibilities; ensuring that staff is properly trained and fully capable of exercising any delegated authority; ensuring compliance with [VA Financial Policies and Procedures, Volume XIII, Chapter 4, Charges and Full Cost Recovery](#), or successor policy, which requires certification of review of sharing agreements to determine compliance with federal and VA policy regarding full cost recovery. **NOTE:** VHA has chosen to allow stations to

*self-certify compliance with full cost. Certification must be forwarded to the designated CO.*

(4) Developing long-term communication strategies in order to provide local communities awareness of opportunities to purchase HCR services from VHA.

(5) Establishing a business team. Membership of the team is at the discretion of the Director. When an opportunity to sell HCR is contemplated, a business team must be established with appropriate membership to coordinate the activity. Examples of team membership may include clinical, finance, legal, human resources/union representative, facility management, and safety. The business team responsibilities include the following:

(a) Determining reimbursement rates / revenue. Full cost of the HCR must be determined. The methodology chosen must be documented and worksheets must be maintained in the sharing agreement file. For facilities that have fully implemented Decision Support System (DSS), the DSS is a good source of cost information for clinical services. Selling sharing agreements shall not be executed where the total revenue to be generated is determined to be less than the full cost of all HCR.

(b) Assessing potential liability. Potential liability must be determined for failure of the VA to perform under the terms of the selling sharing agreement. A contingency plan must be developed to allow the facility to meet performance requirements under foreseeable circumstances, or the selling sharing agreement needs to detail circumstances under which VA would not be expected to perform.

(6) Selecting a program official from the organizational element providing the HCR to assist with technical monitoring and administration of the selling sharing agreement. The selected program official must be a Federal employee, and the responsible CO must concur with the selection. The selected program official shall be designated as a "Contracting Officer's Representative (COR)" in a written designation issued and signed by the responsible CO. A COR for a selling sharing agreement under 38 U.S.C. 8153 is not subject to the requirements applicable to CORs for procurement contracts under federal and VA regulations and policies, including those pertaining to training, qualifications, and certification. The written designation issued by the CO will define the scope and limitations of the COR's delegated authority, potentially including but not necessarily limited to:

(a) Monitoring performance and compliance with the terms of the selling sharing agreement;

(b) Providing the CO with all pertinent information related to performance or compliance under the terms of the selling sharing agreement;

(c) Facilitating billing and direct communications with the sharing entity; and

(d) Notifying the CO of programmatic desire or need to exercise existing options (when applicable) or cancel the selling sharing agreement.

**NOTE:** CORs shall not execute, modify, or cancel selling sharing agreements, take any action affecting the terms of a selling sharing agreement or the rights of VA or a sharing entity under the terms of a selling sharing agreement, or otherwise bind the Federal government to take or not take some action. In no event shall a COR possess delegated authority to perform any such actions.

## 6. SELLING THE USE OF VA EQUIPMENT

a. Sharing agreements for use of VA equipment may be executed under the sharing authority if revenue will be generated.

b. Sharing agreements must address responsibility for equipment maintenance and liability for any damages or loss.

c. If selling the use of both equipment and space, only the portion of the sharing agreement relating to equipment is processed by MSO. MSO will coordinate a joint review with the Office of Capital Asset Management, Engineering and Support Service, and the portion of the sharing agreement relating to space will be processed in accordance with VHA Directive 1820, Enhanced Sharing Use of Space Program.

d. Sharing agreements for the use of VA equipment may be executed for a total term (initial term plus any options) of up to five years or the useful life of the equipment, whichever is longer.

## 7. SELLING SERVICES

a. **General Provisions.** VA may enter into selling sharing agreements for the sale of services that qualify as HCR (see paragraph 3(b)), including VA hospital care and medical services, and professional, managerial, and administrative services that are necessary for the operation of a VA medical facility and related to the provision of health care. Sharing agreements for services may be executed for a total term (initial term plus any options) of up to five years.

(1) HCR services may include, for example, physician or nursing consulting services, laboratory testing, research support services, smoking cessation classes, Cardiopulmonary Resuscitation (CPR) certification training, nursing assistant training, and seminars for Continuing Medical Education (CME) credit.

(2) VA may sell education and training services provided such services are necessary for the operation of a VA medical facility and related to the provision of health care. For example, selling education or training services may be appropriate if the educational or training program is part of Veteran patient or staff continuing education. A selling sharing agreement must be executed with each individual receiving education or training services, and such agreements must include terms requiring payment in advance to VA.

(3) The duties of VA staff under terms of selling sharing agreements may not include responsibility for personnel actions, such as hiring, firing, or disciplinary actions on

behalf of the sharing entity, representing the sharing entity in public venues, or setting policy for the sharing entity.

(4) In all circumstances where a sharing entity requests catering services, Veterans Canteen Service must have the right of first refusal. Only after Veterans Canteen Service has indicated that they are not interested or cannot provide the requested service can a medical facility's food and nutrition service enter into a selling agreement to provide catering food service on VA grounds.

b. **Hospital Care and Medical Services.** Selling sharing agreements for the selling of VA hospital care or medical services (inpatient or outpatient care) may be executed in accordance with the sharing authority. However, without the written consent of the Under Secretary for Health, no selling sharing agreements for the selling of VA inpatient services for non-Veterans shall be considered or executed under the sharing authority.

(1) VA facilities seeking to sell HCR services to non-VA health care facilities under selling sharing agreements may voluntarily obtain state permits and licenses where state law requires those non-VA health care facilities to purchase services from entities permitted and/or licensed by the state. VA facilities may pay applicable service charges and fees in obtaining these permits and/or licenses.

(2) No selling sharing agreements will be executed which require VA to coordinate insurance benefits or to pursue third party insurance billings and collections.

(3) VA facilities may enter into selling sharing agreements with Health Maintenance Organizations (HMOs), other types of managed care organizations, or other types of health care providers to sell hospital care or medical services. Before entering into a selling sharing agreement with an HMO or other types of managed care organizations that require co-payments, VA facilities must make provisions to ensure that they will have the capability to bill for and collect the co-payments. The terms of a sharing agreement between VA and an HMO apply to all individuals who receive care pursuant to that agreement, including enrolled Veterans or persons not required to enroll (see 38 Code of Federal Regulations (CFR) 17.37) in VA health care. **NOTE:** *Selling sharing agreements must require payment to VA by the HMO for all services furnished pursuant to the agreement and may not require VA to coordinate insurance benefits or to pursue third party insurance billings and collections.*

(4) Selling sharing agreements may be executed for VA to provide outpatient care, including outpatient diagnostic and consultative services to individual patients referred by a sharing entity (e.g., a community physician wanting to send patients to VA for laboratory work), provided the selling sharing agreement stipulates that the sharing entity is responsible for directly paying VA for all services furnished pursuant to the agreement. In the event that a sharing entity refers a non-Veteran for diagnostic or consultative services, no billing under the sharing authority to either the non-Veteran or to the non-Veteran's third-party insurance carrier will be undertaken.

## 8. STATE VETERANS NURSING HOMES

a. VA may not enter into a sharing agreement to manage or control a State Veterans Nursing Home (SVNH). 38 U.S.C. 1742(b).

b. SVNHS may be granted direct access to VA Federal Supply Schedule (FSS) and/or Prime Vendor contracts for services, equipment, and supplies, including pharmaceuticals, after the SVNH has executed a sharing agreement. In accordance with VHA Directive 2011-035, VA Support for the Provision of Medications to eligible Veterans in a State Veterans Nursing Home, or subsequent policy issue, sharing agreements that provide for the provision of medications to Veterans in SVNHS must comply with Option 1, 2, or 3 as identified in the directive.

c. Once a sharing agreement has been executed, if the SVNH wants to purchase pharmaceuticals, the Contracting Officer must make arrangements with the National Acquisition Center (NAC) for that SVNH to be added to the list maintained by the NAC of SVNHS authorized to buy pharmaceuticals from the approved Prime Vendor.

## 9. LIMITATIONS AND EXCLUSIONS

a. Sharing agreements for VA space are processed in accordance with VHA Directive 1820, Enhanced Sharing Use of Space Program, and are not processed through MSO or pursuant to this Directive (except as provided in paragraph 7(c) when sharing agreements encompass both equipment and space).

b. Agreements with federal agencies. This directive does not apply to agreements to provide services to other federal agencies, which shall be pursuant to the Economy Act, 31 U.S.C. 1535, or for DoD, 38 U.S.C. 8111 and VHA Handbook 1660.04, VA-DoD Health Care Resources Sharing Agreements, or successor policy. **NOTE:** *This Directive does not apply to reimbursement agreements with the Indian Health Service (IHS) for direct care services provided to eligible American Indian or Alaska Native Veterans by IHS. Such reimbursement agreements are authorized by the Economy Act, 31 U.S.C. 1535, and are processed through the VHA Office of Community Care.*

c. Reimbursement agreements with tribal health programs (THPs) for direct care services provided to eligible American Indian or Alaska Native Veterans by THPs are processed through the VHA Office of Community Care.

d. Joint Ventures (JV) Program. Proposals for VA facilities to enter into a JV to enhance quality of services and access for VA beneficiaries are processed through the Office of the Assistant Secretary for Policy and Planning and in accordance with VA Handbook 0311, Joint Ventures Program.

e. VHA may not make capital investments in either facility improvements or in the purchase of additional equipment to accommodate unknown future requirements solely for the purpose of selling services (i.e., a VA facility cannot create or establish a new service just to sell it).

f. Agent Cashier Services. VA may not sell agent cashier services and VA may not hold money for another party or pay out money on its behalf. This would create a fiduciary relationship and, except for very limited circumstances, such as for the joint acquisition of high-tech medical equipment with a sharing entity, VA is not authorized by law to perform such banking functions.

g. Selling sharing agreements for the sale or use of space, equipment, or services to individuals with any kind of employment relationship to VA are prohibited.

h. The sale, resale, or other disposition of VA or government property or equipment is not authorized.

## 10. COMPETITIVE PROCESS

Although there is no requirement for VA to utilize a competitive process when selling HCR under the sharing authority, facilities should consider doing so when appropriate.

## 11. REVENUE

All revenue generated by selling sharing agreements must be credited to the providing facility. The following Financial Management System (FMS) Resource Codes are to be used for reporting revenue received in the medical facility or VISN:

- a. 8002 – Inpatient services.
- b. 8006 – Outpatient services.
- c. 8035 – All other HCR.

## 12. REVIEW REQUIREMENT

All selling sharing agreements, regardless of estimated total revenue, must be submitted for processing and approval through MSO. Selling sharing agreements with estimated total revenue of \$500,000 or more may be executed only after a written MSO technical review is conducted. Contracting Officers are responsible for incorporating all changes required by the legal and/or technical review before the selling sharing agreement is executed.

## 13. PROCESS

This is a two-step process consisting of the review and approval of the concept proposal and the review and approval of the draft selling sharing agreement.

### a. Concept Proposal Review.

(1) The business team prepares the concept proposal and a written certification for signature by the VA medical facility Director. Concurrence by the VISN Network Director is also required. The team identifies the proposed revenue.

(2) The required documentation is submitted by the business team to the CO. The required documentation includes the following: (1) concept proposal, including all documentation supporting the reimbursement rate determination, and (2) the signed Certification by VA Medical Facility Director (with VISN Director concurrence).

(3) The CO reviews the documentation for the concept proposal and, if adequate, submits an electronic Contract Management System (eCMS) review request to [VHACOMSOG@va.gov](mailto:VHACOMSOG@va.gov).

(4) MSO reviews the documentation for sufficiency and forwards the review request to OGC for legal review.

(5) Upon completion of legal review, MSO is notified of recommended changes or concurrence.

(6) MSO notifies the CO when the concept proposal has been approved and requests the draft selling sharing agreement be submitted for processing. Any legal recommendations must be included in the draft selling sharing agreement submitted. MSO shall notify the CO when the concept proposal has not been approved and requires resubmission.

**b. Selling Sharing Agreement Review.**

(1) The CO submits the draft selling sharing agreement to MSO through eCMS.

(a) The general selling sharing agreement template approved by OGC is located in the MSO Customer Resource Center SharePoint site and/or eCMS.

(b) For selling sharing agreements involving Organ Procurement Organizations (OPO), eye banks, or tissue banks, the CO shall utilize the specialized template approved by OGC located on the [MSO Customer Resource Center](#) SharePoint site.

**NOTE:** The “agreements” referenced in VHA Handbook 1101.03, Organ, Tissue, and Eye Donation Process (paragraph 6) address the donation process between the VHA facility and the OPO and are not the selling sharing agreement when organ donation occurs.

(2) Draft selling sharing agreements with estimated total revenue of \$500,000 or more require a written technical review by MSO. MSO will verify the draft selling sharing agreement is consistent with the approved concept proposal, regardless of estimated total revenue.

(3) MSO submits the draft selling sharing agreement to OGC for legal review.

(4) MSO notifies the CO of legal or technical comments, coordinates review of any revisions addressing legal or technical comments, and grants approval.

(5) For tracking purposes, the CO shall electronically send the executed selling sharing agreement to MSO at [VHACOMSOG@va.gov](mailto:VHACOMSOG@va.gov).

#### 14. REFERENCES

- a. 31 U.S.C. 1535.
- b. 38 U.S.C. 1701.
- c. 38 U.S.C. 1742.
- d. 38 U.S.C. 8151 – 8153.
- e. 38 C.F.R. 17.240.
- f. VA Handbook 0311, Joint Ventures Program.
- g. VHA Directive 2011-035, VA Support for the Provision of Medications to Eligible Veterans in a State Veterans Nursing Home, or subsequent policy issue.
- h. VHA Handbook 1101.03, Organ, Tissue, and Eye Donation Process.
- i. VHA Directive 1820, Enhanced Sharing Use of Space Program.
- j. VA Financial Policies and Procedures, Volume XIII, Chapter 4, Charges and Full Cost Recovery.