

JOINT ACQUISITION OF MEDICAL EQUIPMENT

1. REASON FOR ISSUE: This Veterans Health Administration (VHA) directive governs joint acquisitions of medical equipment (JAME) under Title 38 United States Code (U.S.C.) §§ 8153, 8157-58.

2. SUMMARY OF MAJOR CHANGES: This directive provides updated policy for JAME. Major changes include:

a. New roles and responsibilities for all stakeholders, including Department of Veterans Affairs (VA) medical facility Director, Veterans Integrated Service Network (VISN) Director, Network Contracting Office (NCO) and Medical Sharing/Affiliate Office (MSO). These changes are found in paragraph 4.

b. Providing additional instructions for processing JAME agreements, which include reviews of both the concept proposal and the draft JAME and Escrow Agreement. These changes can be found in Appendix A.

3. RELATED ISSUES: VHA Directive 1660.01, Health Care Resources Sharing Authority - Selling, dated June 20, 2018; VHA Directive 1820, Enhanced Sharing Use of Space Program, dated November 7, 2017; VHA Handbook 1660.03, Conflict of Interest for the Aspects of Contracting for Sharing of Health-Care Resources, dated November 4, 2015; VA Directive 1663, Health Care Resources (HCR) Contracting - Buying, dated May 10, 2018.

4. RESPONSIBLE OFFICE: VHA Procurement and Logistics Office (P&LO), Medical Sharing/Affiliate Office (MSO, 10NA2) is responsible for the content of this directive. Questions may be referred to the MSO mail group at VHACOMSOG@va.gov and 254-749-8369.

5. RESCISSIONS: VHA Handbook 1660.2, Joint Acquisition of Medical Equipment, dated August 1, 1997 is rescinded.

6. RECERTIFICATION: This VHA directive is scheduled for recertification on or before the last working day of August 2025. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

August 22, 2020

VHA DIRECTIVE 7026

**BY DIRECTION OF THE UNDER
SECRETARY FOR HEALTH:**

/s/ Deborah E. Kramer, MS
Acting Assistant Under Secretary for Health
for Support

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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JOINT ACQUISITION OF MEDICAL EQUIPMENT OVERVIEWA-1

JOINT ACQUISITION OF MEDICAL EQUIPMENT

1. PURPOSE

This Veterans Health Administration (VHA) directive maintains VHA policy, responsibilities and standards for all Joint Acquisition of Medical Equipment (JAME). **AUTHORITY:** Title 38 United States Code (U.S.C.) §§ 7301(b), 8153 and 8157-8158.

2. BACKGROUND

a. JAME is authorized by the Department of Veterans Affairs (VA) and institutions affiliated with VA, or other approved entities that are legally associated with affiliated institutions, in accordance with 38 U.S.C. §§ 7302, 8157 and 8158. Medical equipment that is jointly acquired under 38 U.S.C. § 8157 is jointly owned by VA and the joint purchaser.

b. VA is authorized by 38 U.S.C. § 8158 to enter into escrow agreements with joint purchasers for purpose of facilitating JAME under 38 U.S.C. § 8157. Under such escrow agreements, VA receives the joint purchaser's portion of the equipment purchase price, administers those funds in an escrow account, disburses the escrowed funds to pay for the joint purchaser's portion of the equipment purchase price and returns the undisbursed funds (e.g., accrued interest) to the joint purchaser.

3. POLICY

It is VHA policy that one or more VA medical facilities procure necessary equipment jointly with institutions affiliated with VA, or other approved entities that are legally associated with affiliated institutions, to provide high-quality health care to Veterans.

4. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for ensuring overall VHA compliance with this directive.

b. **Assistant Under Secretary for Health for Support.** The Assistant Under Secretary for Health for Support is responsible for:

(1) Providing VHA-wide guidance regarding JAME under 38 U.S.C. §§ 8153, 8157-58 and this directive.

(2) Communicating the contents of this directive to the Procurement and Logistics Office (P&LO) to assure compliance with this directive, relevant standards and applicable regulations.

c. **Assistant Under Secretary for Health for Operations.** The Assistant Under Secretary for Health for Operations is responsible for:

(1) Communicating the contents of this directive to each of the Veterans Integrated

Services Networks (VISNs).

(2) Providing assistance to VISN Directors to resolve implementation and compliance challenges in all VA medical facilities within that VISN.

(3) Providing oversight of VISNs to assure compliance with this directive, relevant standards and applicable regulations.

d. **Director, Medical Sharing/Affiliate Office, Procurement and Logistics Office.**

The Director, Medical Sharing/Affiliate Office (MSO), P&LO is responsible for:

(1) Ensuring JAME concept proposals received from the VHA Network Contracting Office (NCO) to the Office of General Counsel (OGC) are processed for legal review.

(2) Following OGC review, reviewing and approving all JAME concept proposals, taking OGC review into account if appropriate.

(3) Informing VHA NCO and Business Team of concept proposal approvals and processing the Joint Acquisition and Escrow Agreement draft from the VISN Director.

(4) Informing the VHA NCO and Business Team of concept proposals MSO did not approve, requesting additional information if needed and providing instructions for revision and resubmission.

(5) Submitting Joint Acquisition and Escrow Agreements received from the VHA NCO to OGC for legal review.

(6) Following OGC review, reviewing and approving all Joint Acquisition and Escrow Agreements, taking OGC review into account if appropriate.

(7) Informing the VHA NCO and Business Team of Joint Acquisition and Escrow Agreement approvals.

(8) Informing the VHA NCO and Business Team of Joint Acquisition and Escrow Agreements MSO did not approve, requesting additional information if needed and providing instructions for revision and resubmission.

(9) Electronically receiving and storing from the VHA NCO the executed Joint Acquisition and Escrow Agreement.

e. **VHA Network Contracting Office.** The VHA NCO assigns a Contracting Officer who is duly appointed and authorized to enter JAME procurements on behalf of VA and is responsible for:

(1) Reviewing for sufficiency each JAME concept proposal sent from the VISN Director for processing to the MSO.

(2) Submitting Joint Acquisition and Escrow Agreements received from the VISN

Director to the MSO for processing for legal review.

f. **Veterans Integrated Service Network Director.** The VISN Director is responsible for:

(1) Reviewing and approving all JAME concept proposals forwarded by the VA medical facility Director and forwarding approved proposals to MSO through the VHA NCO.

(2) Reviewing and approving all Joint Acquisition and Escrow Agreements forwarded by the VA medical facility Director and forwarding approved agreements to MSO through the VHA NCO.

g. **VA Medical Facility Director.** The VA medical facility Director is responsible for:

(1) Ensuring compliance with this directive at the VA medical facility; meeting all management responsibilities; ensuring that staff is properly trained and fully capable of exercising any delegated authority.

(2) Establishing a Business Team and designating a manager to coordinate activity when considering an opportunity for JAME.

(3) Ensuring appropriate coordination by the Business Team of the review, obtaining required approval and contract administration processes for each of the distinct transactions and legal instruments that comprise a single JAME, as follows:

(a) The Joint Acquisition and Escrow Agreement.

(b) Any selling sharing agreements and procurement contracts - pursuant to 38 U.S.C. § 8153 - that are necessary to share HCR related to use of the equipment (e.g., use of space, equipment maintenance or related medical or administrative services) in the manner required for both parties to use the JAME as intended. **NOTE:** *Selling sharing agreements are defined in VHA Directive 1660.01, Health Care Resources Sharing Authority – Selling, dated June 20, 2018.*

(c) The procurement contract for the JAME.

(4) Reviewing and approving all JAME concept proposals submitted by the Business Team and forwarding approved concept proposals to the VISN Director.

(5) Reviewing and approving all Joint Acquisition and Escrow Agreements submitted by the Business Team and forwarding approved agreements to the VISN Director.

(6) Signing all Joint Acquisition and Escrow Agreements as the authorized VA official to include the VHA NCO.

h. **VA Medical Facility Business Team Manager.** The VA medical facility Business Team consists of clinical, contracting, finance, legal, human resources/union, facility

management and safety representatives convened by the VA medical facility Director. The VA medical facility Business Team Manager is responsible for:

(1) Coordinating the development of the JAME concept proposal, including obtaining appropriate input from all relevant stakeholders (e.g., clinical, contracting).

(2) Drafting the JAME concept proposal and submitting it to the VA medical facility Director.

(3) Coordinating the development of the Joint Acquisition and Escrow Agreement, including obtaining appropriate input from all relevant stakeholders (e.g., clinical, contracting) as designated by the facility requirements for JAME.

(4) Drafting the Joint Acquisition and Escrow Agreement and submitting it to the VA medical facility Director.

5. FUNDING

a. Pursuant to 38 U.S.C. § 8157(b)(1), VA may not pay more than one-half of the purchase price of jointly acquired medical equipment. The purchase price of jointly acquired medical equipment must be calculated separately from the price or cost of related but distinct services or supplies, such as equipment installation or maintenance.

b. Site preparation and facility improvements cannot be funded by VA unless the equipment is located at VA facilities.

c. A may not enter into a procurement contract to purchase JAME or obligate funds for that purpose, until all the following have occurred:

(1) VA has entered into a Joint Acquisition and Escrow Agreement under which the joint purchaser is obligated to provide VA at least one-half of the purchase price of the equipment.

(2) VA has received the joint purchaser's portion of the purchase price and has placed those funds in an escrow account in accordance with 38 U.S.C. § 8158 and the terms of the Joint Acquisition and Escrow Agreement.

(3) At least one-half of the purchase price of the equipment is available in a VA appropriation or fund for the expenditure or obligation. See 38 U.S.C. §§ 8157(b)(4), 8158(c)(1). **NOTE:** *Even if the joint purchaser is contributing more than one-half of the equipment purchase price, VA must nevertheless have at least one-half the purchase price of the equipment available in a VA appropriation or fund at the time VA enters into a procurement contract to purchase the jointly acquired equipment. This anomalous result is mandated by subsection 8158(c)(1).*

d. Revenue received from the sale of jointly acquired medical equipment to the joint purchaser, as authorized under 38 U.S.C. § 8157(c)(1), must be credited to the applicable VA medical appropriation. **NOTE:** *All other sales of VA's interest in jointly*

acquired medical equipment (i.e., all sales other than sales to joint purchasers pursuant to subsection 8157(c)(1), including any sale to any party other than the joint purchaser) are subject to different laws governing the disposition of the resulting revenue. The fiscal aspects of any sale—other than a sale pursuant to subsection 8157(c)(1)—are beyond the scope of this directive.

e. Funds held in an escrow account under 38 U.S.C. § 8158 are not public funds. See 38 U.S.C. § 8158(c)(2).

6. TRAINING

There are no formal training requirements associated with this directive.

7. RECORDS MANAGEMENT

All records regardless of format (e.g., paper, electronic, electronic systems) created by this directive shall be managed per the National Archives and Records Administration (NARA) approved records schedules found in VA Records Control Schedule 10-1. Questions regarding any aspect of records management should be addressed to the appropriate Records Manager or Records Liaison.

8. REFERENCES

- a. 38 U.S.C. §§ 7302, 8153 and 8157-8158.
- b. VA Directive 1663, Health Care Resources Contracting - Buying, dated May 10, 2018.
- c. VHA Directive 1660.01, Health Care Resources Sharing Authority - Selling, dated June 20, 2018.
- d. VHA Handbook 1660.03, Conflict of Interest for the Aspects of Contracting for Sharing of Health-Care Resources (HCR), dated November 4, 2015.

JOINT ACQUISITION OF MEDICAL EQUIPMENT OVERVIEW

1. JOINT ACQUISITION OF MEDICAL EQUIPMENT

Joint Acquisition of Medical Equipment (JAME) is an acquisition of medical equipment, by the Department of Veterans Affairs (VA) and an institution affiliated with VA in accordance with Title 38 United States Code (U.S.C.) § 7302 or another approved entity that is legally associated with an affiliated institution, that is conducted under the authorities of and complies with the parameters set forth in 38 U.S.C. §§ 8153, 8157 and 8158. The parameters set forth in those authorities include:

a. VA cannot pay more than one-half of the purchase price of the medical equipment acquired through JAME.

b. VA - not the joint purchaser - must purchase the equipment by means of a procurement contract subject to the Federal Acquisition Regulation (FAR) and all other applicable procurement laws. **NOTE:** Not processed through Medical Sharing/Affiliate Office (MSO).

c. VA must receive the joint purchasers' share of the purchase price of the medical equipment before awarding the contract to purchase the equipment.

d. Title to the jointly acquired equipment is jointly held by VA and the joint purchaser.

2. JOINT ACQUISITION MEDICAL EQUIPMENT LEGAL OVERVIEW

JAME is comprised of several distinct legal instruments and transactions, including the following:

a. VA and the joint purchaser executing a Joint Acquisition and Escrow Agreement consistent with the requirements of 38 U.S.C. § 8158.

b. VA receiving the joint purchaser's portion of the equipment purchase price and administering those funds in an escrow account in accordance with the terms of the Joint Acquisition and Escrow Agreement.

c. VA and the joint purchaser executing any selling sharing agreements and/or procurement contracts - pursuant to 38 U.S.C. § 8153 - that are necessary to share health care resources (HCR) related to use of the equipment (e.g., use of space, equipment maintenance or related medical or administrative services) in the manner required for both parties to use the jointly acquired equipment as intended.

d. VA conducting the acquisition and awarding the contract for the equipment.

e. VA returning any undisbursed funds in the escrow account (e.g., accrued interest) to the joint purchaser, in accordance with the terms of the Joint Acquisition and Escrow

Agreement. JAME also encompasses VA and the joint purchaser administering the Joint Acquisition and Escrow Agreement and any related selling sharing agreements and procurement contracts under 38 U.S.C. § 8153 throughout their respective terms.

3. JOINT ACQUISITION OF MEDICAL EQUIPMENT CONCEPT PROPOSAL

JAME concept proposal is a written proposal, from the requesting medical facility to the Veterans Integrated Services Network (VISN) Director, to pursue a joint acquisition of one or more specific items of medical equipment using the authorities set forth at 38 U.S.C. §§ 8153, 8157-58. A JAME Concept Proposal contains all pertinent information and supporting documentation regarding the key details that are relevant to determining whether proceeding with the proposed joint acquisition is feasible and in the best interest of VA, including:

- a. A detailed description of the facility's relevant needs.
- b. The medical equipment to be jointly acquired and an explanation as to why any identified specifications are necessary to meet the facility's need.
- c. The joint purchaser.
- d. Where the equipment would be located and used.
- e. The estimated cost of the equipment.
- f. VA's portion of the equipment purchase price (cannot exceed 50 percent).
- g. Any HCR, including services e.g., equipment maintenance or use of space, that VA would need to sell to the joint purchaser to permit that purchaser to use the medical equipment as desired, and a preliminary assessment as to feasibility of selling such HCR under 38 U.S.C. § 8153, taking into account:
 - (1) The certification and full cost recovery requirements set forth in Veterans Health Administration (VHA) Directive 1660.01, Health Care Resources Sharing Authority - Selling, dated June 20, 2018.
 - (2) All applicable requirements set forth in VHA Directive 1820, Enhanced Sharing Use of Space Program, dated November 7, 2017.
 - (3) Any HCR, including services (e.g., equipment maintenance) or use of space, that VA would need to buy from the joint purchaser to permit VA to use the medical equipment as desired and a cost estimate for all such resources.
 - (4) Any other details identified in this policy or procedures, or that are requested by the medical facility through the VISN Director, the VA Medical Sharing/Affiliate Office or any other office involved in reviewing or approving the proposal (e.g., the Office of General Counsel, VHA Network Contracting Office).

4. JOINT ACQUISITION AND ESCROW AGREEMENT

A Joint Acquisition and Escrow Agreement is a contract, between VA and an institution affiliated with VA in accordance with 38 U.S.C. § 7302 or another approved entity that is legally associated with an affiliated institution, that authorizes a JAME under 38 U.S.C. §§ 8153, 8157-8158 and sets forth the terms and conditions governing that joint acquisition. A Joint Acquisition and Escrow Agreement serves two specific statutory roles: it is simultaneously an “agreement” within the meaning of 38 U.S.C. § 8157(a) and an “escrow agreement” within the meaning of 38 U.S.C. § 8158(a). Consequently, it can be used for the purposes authorized under those sections and is subject to the statutory limitations set forth in those sections. **NOTE:** *A Joint Acquisition and Escrow Agreement is not a procurement contract subject to the FAR and other procurement laws. VA cannot and does not buy or lease anything from the joint purchaser under a Joint Acquisition and Escrow Agreement. Any acquisitions arising under or related to JAME, including purchasing HCR (e.g., use of space or equipment maintenance) from the joint purchaser, as well as procuring the medical equipment, are accomplished separately through procurement contracts.*

a. A Joint Acquisition and Escrow Agreement contains terms governing the following aspects of the joint acquisition, at a minimum:

(1) The medical equipment to be purchased and any related requirements (e.g., warranties).

(2) The parties’ respective interests in - and rights and obligations regarding - the jointly acquired medical equipment.

(3) VA receiving the joint purchaser’s portion of the equipment purchase price, administering those funds in an escrow account and disbursing and/or returning such funds.

(4) The subsequent execution of any selling sharing agreements or procurement contracts, under 38 U.S.C. § 8153, that are necessary to HCR related to use of the equipment (e.g., use of space, equipment maintenance or related medical or administrative services) in the manner required for both parties to use the jointly acquired equipment as intended.

(5) All other relevant rights, obligations and liabilities of the parties.

5. JOINT ACQUISITION OF MEDICAL EQUIPMENT APPROVAL PROCESS

The process for approving JAME under 38 U.S.C. §§ 8153, 8157 and 8158 consists of two steps: review and approval of the JAME concept proposal and review and approval of the draft Joint Acquisition and Escrow Agreement.

a. **Joint Acquisition of Medical Equipment Concept Proposal Review.**

(1) The VA medical facility Business Team prepares the JAME concept proposal and

submits it to the VA medical facility Director.

(2) The VA medical facility Director reviews and, if appropriate, approves JAME concept proposal. If approved, the proposal is forwarded to the VISN Director for concurrence.

(3) The VISN Director reviews and, if appropriate, concurs. If approved by the VISN Director, the proposal is forwarded to the VHA NCO for processing to MSO.

(4) MSO submits the proposal to Office of General Council (OGC) for review. MSO then reviews and, if appropriate, taking any OGC review into account, approves.

(5) When approved, MSO informs the Business Team through the VHA NCO and requests the draft Joint Acquisition and Escrow Agreement be submitted to MSO for processing.

(6) If, for any reason, including comments from OGC, MSO decides the concept proposal should not be approved, MSO will inform the Business Team through the VHA NCO that decision, any additional information requested and any other instructions for revision and resubmission. Revised proposals will be processed as above.

(7) MSO notifies the VHA NCO when the concept proposal has been approved.

b. Joint Acquisition and Escrow Agreement Review.

(1) The Business Team prepares the Joint Acquisition and Escrow Agreement and submits it to the medical facility Director.

(2) The VA medical facility Director reviews and, if appropriate, approves. If approved, the agreement is forwarded to the VISN Director for review and approval.

(3) The VISN Director reviews and, if appropriate, approves. If approved by the VISN Director, the proposal is forwarded to MSO by the VHA NCO.

(4) MSO submits Joint Acquisition and Escrow Agreement to OGC. MSO then reviews and, if appropriate, taking any OGC review into account, approves.

(5) When approved, MSO informs the Business Team through the VHA NCO, the Joint Acquisition and Escrow Agreement is executed by the joint purchaser and the VA official at the VA medical facility. For tracking purposes, the VHA NCO electronically sends the executed Joint Acquisition and Escrow Agreement to MSO at VHACOMSOG@va.gov.

(6) If, for any reason, including comments from OGC, MSO decides the draft Joint Acquisition and Escrow Agreement should not be approved, MSO will inform the Business Team through the VHA NCO of that decision, any additional information requested and any other instructions for revision and resubmission. Revised draft agreements will be processed as above.