

WAIVERS TO VHA NATIONAL POLICY

1. SUMMARY OF CONTENT: This new directive:

a. Replaces the interim waiver process established by VHA Notice 2023-02, Waivers to VHA National Policy, dated March 29, 2023. **NOTE:** *Active waivers approved prior to publication of this directive will remain in effect through the waiver expiration date.*

b. Establishes requirements for obtaining waivers from compliance with all or part of Veterans Health Administration (VHA) national policy and introduces responsibilities for requesting, approving, storing, tracking, reporting, and evaluating such waivers in paragraph 2. This includes mandatory reporting of required elements of policy waiver requests for every new waiver initiated after publication of this directive via the Waivers to VHA National Policy centralized tracking website.

c. Outlines the detailed waiver processes for VHA operating units, policy owners, and VHA upper level leadership who provide oversight through the Audit, Risk and Compliance Committee in Appendix A.

d. Defines waiver in paragraph 7.

e. Identifies situations when a waiver to VHA national policy is not required in Appendix A, paragraph 4.

2. RELATED ISSUES: VA Directive 0000, Delegations of Authority, dated November 14, 2018; VA Directive 0999, Enterprise Directives Management (EDM), dated October 9, 2018; VHA Directive 0000, Delegations of Authority for Signature, Oversight and Management of VHA National Policy, dated October 11, 2023; VHA Directive 0999(1), VHA Policy Management, dated March 29, 2022.

3. POLICY OWNER: The VHA Office of Integrity and Compliance (OIC) (10OIC) is responsible for the content of this directive. Questions may be referred to 202-461-0683 or vhacooic@va.gov.

4. LOCAL DOCUMENT REQUIREMENT: There are no local document requirements in this directive.

5. RESCISSIONS: VHA Notice 2023-02, Waivers to VHA National Policy, dated March 29, 2023, is rescinded.

6. RECERTIFICATION: This VHA directive is scheduled for recertification on or before the last working day of March 2029. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

7. IMPLEMENTATION SCHEDULE: This directive must be implemented within 6 months of publication, after which OIC will start conducting oversight activities to evaluate compliance with this directive.

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

/s/ Shereef Elnahal MD, MBA
Under Secretary for Health

NOTE: *All references herein to Department of Veterans Affairs (VA) and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.*

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APPENDIX A

FRAMEWORK FOR WAIVERS TO VHA NATIONAL POLICYA-1

WAIVERS TO VHA NATIONAL POLICY

1. POLICY

It is Veterans Health Administration (VHA) policy to issue and oversee waivers to VHA national policy in order to exempt one or more VHA operating units from compliance with certain VHA national policy requirements for a specified time period. No waivers are allowed from compliance with policy standards that are based on statutes or VA regulations. **AUTHORITY:** 38 U.S.C. § 7301(b); 38 C.F.R. § 2.6(a)(1).

2. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for:

(1) Ensuring overall VHA compliance with this directive.

(2) Supporting VHA Office of Integrity and Compliance (OIC) with implementation and oversight of this directive.

(3) Providing sufficient resources (e.g., staff and budget) to OIC that ensures waivers to VHA national policy are centrally tracked, managed, and reported.

(4) Providing OIC with executive support, including during interactions with other executives and at executive meetings or governing bodies, to assist with the effective implementation, management, and oversight of waivers to VHA national policy.

b. **VHA Upper Level Leadership.** **NOTE:** *VHA upper level leadership includes the Deputy Under Secretary for Health, VHA Chief of Staff, Assistant Under Secretaries for Health, Associate Deputy Under Secretaries for Health, and others to whom the Under Secretary for Health delegates signature, oversight, and decisional authority for VHA national policy.* VHA upper level leadership is responsible for:

(1) Ensuring standards articulated in VHA national policy are resourced and achievable to minimize the number of policy waivers required.

(2) Assuming responsibility as the accountable official for all standards published under their signature including VHA national policy oversight, policy outcomes, and approved waivers.

(3) Encouraging compliance with VHA national policy to the extent possible while recognizing that regional and local barriers to compliance, or the need to support continuous improvement and innovation, may warrant a waiver request. **NOTE:** *For additional information on barriers to policy implementation, see Appendix A.*

(4) Ensuring that written requests for waivers are submitted to policy owners when barriers that prevent full compliance with a VHA national policy are identified at one or more VHA operating units. **NOTE:** *In addition to being a waiver requester, VHA upper*

level leadership may also be a policy owner and must adhere to policy owner responsibilities outlined in paragraph 2.f. in such instances.

(5) Ensuring policy owners comply with this directive and the timelines specified for approval or denial, notification, tracking, and rescission of all waiver requests which includes ensuring policy owners are submitting required policy waiver elements via the Waivers to VHA National Policy website at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers>. **NOTE:** *This is an internal VA website that is not available to the public.*

(6) Making a final determination, in consultation with their subordinate policy owner and other subject matter experts as needed, within 45 calendar days of receipt when a VHA operating unit submits a written appeal through OIC asking for reversal of a waiver denial, and then communicating the decision to OIC for forwarding to the policy owner and appellant. Reasons for overturning a waiver decision include, but are not limited to, decisions that are arbitrary, capricious, contrary to law, or an abuse of authority; decisions that fail to recognize when a policy standard is unattainable as written, despite good faith efforts to comply; or decisions that conflict with wider VA or VHA objectives, strategies, standards, or priorities.

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) Assisting VISN Directors to resolve implementation and compliance challenges in all Department of Veterans' Affairs (VA) medical facilities within that VISN.

(3) Providing oversight of VISNs to ensure compliance with this directive and its effectiveness.

d. **Executive Director, Office of Integrity and Compliance.** In addition to the responsibilities outlined in paragraph 2.f. for policy owners and paragraph 2.g. for VHA operating units, the Executive Director of OIC is responsible for:

(1) Providing VHA with policy and a consistent framework for the issuance, management, and oversight of waivers from compliance with VHA national policy.

(2) Monitoring compliance with this directive and taking appropriate action when noncompliance is identified.

(3) Designing and maintaining a waiver process that encourages compliance with VHA national policy while identifying and addressing regional and local barriers to compliance and supporting innovations that may contradict policy during the trial period. **NOTE:** *For further details regarding innovation waivers, see paragraph 2.d. in Appendix A.*

(4) Maintaining the Waivers to VHA National Policy centralized tracking website and developing related content; the required policy waiver elements in collaboration with the Audit, Risk and Compliance Committee (ARCC); and data collection requirements needed to submit, adjudicate, store, centrally track, monitor, report, and oversee VHA national policy waiver requests. The Waivers to VHA National Policy centralized tracking website is available at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers>. **NOTE:** *This is an internal VA website that is not available to the public.* This includes, but is not limited to:

(a) Posting new active waivers to the Waivers to VHA National Policy centralized tracking website within 10 business days of receipt, or once any errors in the waiver request identified by the quality check are corrected. **NOTE:** *For additional information on required elements for a waiver request, see Appendix A, paragraph 3.*

(b) Removing rescinded waivers immediately and expired waivers at the end of the month of expiration. Prior to removing an expired waiver, OIC must send an alert to the waiver requester so an extension can be requested if needed. **NOTE:** *Active waivers are maintained at* <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/Active-Waivers.aspx>. *This is an internal VA website that is not available to the public.*

(5) Communicating with policy owners and VHA operating units to make them aware of the VHA national policy waiver process and requirements.

(6) Reporting data received from policy owners for all active, denied, and rescinded waivers every 6 months to ARCC.

(7) Submitting written appeals received by OIC to the VHA upper level leadership position that signed the waived policy to obtain a final determination when a requester contests a waiver denial, and then communicating the decision to the policy owner and appellant.

(8) Providing consultative services and support to VHA upper level leadership, policy owners, and VHA operating units regarding the VHA national policy waiver process.

e. **Chair, Audit, Risk and Compliance Committee.** **NOTE:** *ARCC is the governance body within VHA that provides strategic guidance and direction for internal audit, compliance, and risk assessment activities as designated in VHA Directive 1030(2), VHA Integrity and Compliance Program, dated December 29, 2020. The Deputy Under Secretary for Health or designee serves as the ARCC Chair. The ARCC Charter is located at* <https://dvagov.sharepoint.com/sites/VACOVHACBI/1030/Support%20Files/Forms/AllItems.aspx>. *This is an internal VA website that is not available to the public.* The ARCC Chair is responsible for:

(1) Ensuring that ARCC provides oversight by reviewing data on all active, denied, and rescinded VHA national policy waivers every 6 months to ensure waiver decisions

are appropriate and action is taken when waivers indicate a systemic problem, negatively impact patient care, or warrant a change to current VHA national policy. For example, a high volume of waiver requests on a specific policy may indicate an issue with the policy. Oversight provided by ARCC includes, but is not limited to, making decisions or recommendations when concerns and deficiencies are identified by the review. Consideration must be given to the level of risk presented to the VHA organization, if any, by active waivers and whether the risk is acceptable.

(2) Documenting in ARCC meeting minutes that the required 6-month review of policy waiver data occurred, including any related decisions or recommendations made by ARCC.

(3) Ensuring that ARCC provides executive guidance to OIC on strategic decisions and issues of material significance pertaining to the VHA national policy waiver framework, required policy waiver elements, and the waiver process.

f. **Policy Owner.** ***NOTE:** The policy owner is the VHA entity (typically a program office) listed on the transmittal sheet of VHA national policy that is responsible for development and maintenance of that policy.* In addition to the responsibilities for VHA operating units requesting policy waivers in paragraph 2.g. when applicable, the policy owner is responsible for:

(1) Ensuring that only relevant, critical, and attainable requirements are mandated in VHA national policy.

(2) Providing VISNs and VA medical facilities with guidance or technical assistance to minimize noncompliance with national VHA policy and the use of waivers, mitigate implementation challenges, and facilitate implementation of policies as intended within the timeframe established by the policy's implementation schedule. ***NOTE:** Situations when a waiver to VHA national policy is not required are identified in Appendix A, paragraph 4.*

(3) Adding language to VHA notices and new or recertified VHA directives if needed detailing any additional requirements for waiver requests established by the policy owner that exceed those outlined in this directive.

(4) Reviewing waiver requests for completeness, accuracy, and validity of the request, to include compliance with applicable statutes or regulations (in consultation with the Office of General Counsel if needed). Waiver requests that are incomplete or inaccurate must be corrected by the requester in collaboration with the policy owner before proceeding. ***NOTE:** See Appendix A for more information on the waiver process. Policy owners may continue to collect waiver requests and publish approved waivers to VHA national policy for their office using their own previously established formal protocols; however, policy owners that maintain their own waiver system must also report required policy waiver elements using the mandatory process referenced in paragraph 2.f.(5) to ensure centralized tracking, reporting, and oversight of waivers. In addition, policy owners that maintain their own website(s) or SharePoint for publishing*

approved waivers to VHA national policy must send each hyperlink for those sites within 6 months of publication of this directive to VHAPolicyWaiverRequests@va.gov and whenever hyperlinks or websites are added, changed, or migrated.

(5) Reporting required policy waiver elements via the Waivers to VHA National Policy centralized tracking website for every new waiver initiated after publication of this directive. The minimum information needed is located in Appendix A, paragraph 3.a. for VHA operating units submitting policy waiver requests and Appendix A paragraph 3.b. for waiver approvers. **NOTE:** The online waiver request tool at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/WaiverRequests.aspx> automatically records required policy waiver elements as the waiver moves through the decision-making process. Policy owners that continue to collect waiver requests and publish waivers using their own system must also complete this reporting requirement within 30 calendar days after decision-making for all new policy waivers. This is done by copying information about the waiver from their system into the national waiver template at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/Policy-Owners-with-Own-Waiver-Processes.aspx>. Contact VHAPolicyWaiverRequests@va.gov for assistance with obtaining access to this SharePoint site, if needed. This is an internal VA website that is not available to the public. If compliance with the national reporting requirement cannot be accomplished by the end of the implementation period, the policy owner must notify OIC at VHAPolicyWaiverRequests@va.gov.

(6) Approving or denying a waiver request within 30 calendar days after submission or notifying the requester if additional time is required due to extenuating circumstances. **NOTE:** No waivers are allowed from compliance with policy standards that are based on statutes or VA regulations.

(a) If approved, the policy owner must:

1. Take into consideration the risk of noncompliance with the waived policy requirement when making waiver decisions. **NOTE:** Waiver requesters are also required to consider the risk.

2. Consult with the requester as needed during development of their action plan to mitigate risk in the interim while bringing the waived policy requirement into compliance, if applicable.

3. Consider whether other VHA operating units may have a similar problem meeting the waived policy requirement to the extent known by the policy owner. If trends of noncompliance are anticipated or identified, the policy owner must review the policy and take appropriate action if needed. Actions may include, but are not limited to, considering the issuance of an additional waiver for each affected facility or one waiver that covers multiple facilities.

4. Consider whether the policy owner may need to petition the appropriate governance board for resources consistent with requirements, modify standards, or update policy to eliminate the need for similar waivers in the future. Actions may include, but are not limited to, amending the waived directive to make the standard more attainable, or developing an Executive Decision Memorandum at the national level to request additional resources on behalf of all impacted VHA operating units to improve compliance with the waived standard.

5. Add a date or triggering event at which point the waiver will expire or be rescinded. **NOTE:** See paragraph 2 in Appendix A for waiver expiration guidance for each waiver category. If no expiration date or event is listed, the waiver will be rescinded automatically when the waived VHA national policy is rescinded or recertified. This ensures that VHA operating units do not rely on a rescinded or expired waiver.

6. If a waiver needs to be extended beyond its expiration date, the requester must notify the policy owner and state the reason for extension. The policy owner can reply in the online waiver request system, send a decision memorandum or email from their office to the requester with a copy to OIC at VHAPolicyWaiverRequests@va.gov if no additional information is needed, or require the requester to submit a new waiver request for approval. **NOTE:** If the requester is the VA medical facility Director, the requester must notify the appropriate VISN Director about the extension decision.

(b) If denied, the policy owner must provide the decision and the reason for waiver denial directly to the requester. The policy owner can reply in the online waiver request system or send a decision memorandum or email from their office to the requester with a copy to OIC at VHAPolicyWaiverRequests@va.gov within 7 calendar days after denial. **NOTE:** This is an internal VA website that is not available to the public.

(7) Rescinding the waiver once conditions in the waiver have been met or the VHA operating unit requesting the waiver has otherwise achieved compliance with the waived VHA national policy requirement, and notifying the requester and OIC at VHAPolicyWaiverRequests@va.gov via email or memorandum. OIC will immediately remove the rescinded waiver from the list of active waivers. **NOTE:** If the requester is the VA medical facility Director, the requester must also notify the appropriate VISN Director about the rescission decision.

(8) Incorporating changes based on lessons learned from active, expired, and rescinded waivers into the subsequent VHA national policy recertification where applicable (e.g., revising a standard that is found to be unattainable at some or all locations despite good faith efforts to comply).

(9) Communicating significant concerns to OIC at VHAPolicyWaiverRequests@va.gov for discussion at ARCC related to chronic noncompliance, waiver trends, policy standards, or the waiver process.

g. **VHA Operating Unit Directors.** **NOTE:** VHA operating unit Directors include VHA program office Directors, VISN Directors, VA medical facility Directors, and

Consolidated Patient Account Center (CPAC) Directors. VHA operating unit Directors are responsible for:

- (1) Ensuring compliance with this directive and informing VHAPolicyWaiverRequests@va.gov or leadership when barriers to compliance are identified.
- (2) Encouraging compliance with VHA national policy within their VHA operating unit to the extent possible while recognizing that regional and local barriers to compliance, or the need to support continuous improvement and innovation which might violate existing policy, may warrant initiating a waiver request.
- (3) Initiating waiver requests to policy owners after reviewing any waiver guidance contained within the policy for which a waiver is requested, any instructions provided by the policy owner, and this directive. Use the online waiver request system at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers> to submit a waiver request, unless the policy owner mandates the use of their own waiver process. Document in writing the VHA operating unit Director's authorization to submit the waiver request for decision. For additional information on the waiver request process, see Appendix A. **NOTE:** *Prior to forwarding to the policy owner for approval, the VHA operating unit Director must authorize the waiver request in writing as either the originator or the sponsor of waiver requests submitted by others (e.g., subordinate Service Chiefs, Program Managers, section leaders). No waivers are allowed from compliance with policy standards that are based on statutes or VA regulations. VA medical facility Directors must notify the appropriate VISN Director for awareness as other VA medical facilities in the VISN may also be unable to meet the policy requirement. CPAC Directors must notify the Executive Director for Revenue Operations if the CPAC submits a waiver request to the policy owner. Situations when a waiver to VHA national policy is not required are identified in Appendix A, paragraph 4. Helpful files for policy waivers can be found at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/FAQs.aspx>. This is an internal VA website that is not available to the public.* Before submitting a waiver request, VHA operating unit Directors must:
 - (a) Take into consideration the risk of noncompliance with the waived policy requirement before submitting a waiver request.
 - (b) Ensure that the operating unit requesting the policy waiver accepts the responsibility of working with the policy owner to create an action plan to bring the waived policy requirement into compliance within a specified timeframe, where applicable, which includes mitigating risk during the waiver period.
 - (c) Meet labor management obligations for the location(s) covered by the waiver if the process to be waived involves a negotiated practice or triggers a duty to bargain.
 - (d) Identify any specialized instructions for submitting waiver requests as specified by the policy owner or as documented in the waived policy, if applicable.

(4) Ensuring that local policies are not used to circumvent the standardized waiver process specified by this directive.

(5) Monitoring action plan compliance for approved waivers to ensure that the remediation strategy to achieve compliance with the waived requirement is completed within the timeframe specified in the plan, where applicable, or notifying the policy owner to request an extension if additional time is required due to extenuating circumstances.

(6) Informing the policy owner when the event that triggered an approved waiver has been satisfied or if the requester has otherwise achieved full compliance with the waived policy requirement.

(7) Seeking approval by notifying the policy owner and stating the reason for extension if a waiver needs to be extended beyond its expiration date.

(8) Submitting a written appeal through OIC to the VHA upper level leadership position that signed the waived policy to obtain a final determination when a requester contests a waiver denial. **NOTE:** *Written appeals must be submitted to VHAPolicyWaiverRequests@va.gov. VA medical facilities must go through the VISN Director to file an appeal.*

(9) Ensuring that operating units requesting policy waivers report required policy waiver elements via the Waivers to VHA National Policy centralized tracking website for every new waiver initiated after publication of this directive. The minimum information needed from operating units submitting policy waiver requests is located in Appendix A, paragraph 3.a. **NOTE:** *The online waiver request tool at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/WaiverRequests.aspx> automatically records required policy waiver elements as the waiver moves through the decision-making process. This is an internal VA website that is not available to the public. Follow guidance issued by the policy owner if they maintain their own waiver process and have a different method of collecting the required policy waiver elements.*

h. **Veterans Integrated Service Network Director.** In addition to the responsibilities outlined in paragraph 2.g., the VISN Director is responsible for:

(1) Ensuring that all VA medical facilities within the VISN comply with this directive and informing VHAPolicyWaiverRequests@va.gov or leadership when barriers to compliance are identified.

(2) Initiating requests for waivers to national policy on behalf of the VISN or, by request, on behalf of a VA medical facility within their VISN. **NOTE:** *For information on the waiver process, see Appendix A, paragraph 3.*

(3) Reviewing a copy of the waiver requests initiated by VA medical facility Directors within their VISN for awareness and to identify whether other VA medical facilities in the

VISN may also be unable to meet the policy requirement, in which case additional waiver requests may be needed.

(4) Reviewing written appeal requests received from VA medical facility requesters contesting a waiver denial and forwarding appeal requests to OIC at VHAPolicyWaiverRequests@va.gov for transmittal to the VHA upper level leadership position that signed the waived policy to obtain a final determination.

i. **VA Medical Facility Director.** In addition to the responsibilities outlined in paragraph 2.g., the VA medical facility Director is responsible for:

(1) Notifying the appropriate VISN Director for awareness when submitting a waiver request directly to the policy owner, which can help the VISN identify whether other VA medical facilities in the VISN may also be unable to meet the policy requirement.

(2) When contesting a waiver denial, submitting written appeal requests through the VISN Director for forwarding to OIC at VHAPolicyWaiverRequests@va.gov to obtain a final determination from the VHA upper level leadership position that signed the waived policy.

j. **VHA Operating Unit Employees.** *NOTE: VHA operating unit employees include employees of VHA program offices, VISNs, VA medical facilities, and CPACs.* VHA operating unit employees are responsible for:

(1) Complying with VHA national policy as written in the absence of an approved waiver request.

(2) Seeking guidance, technical assistance, or training to mitigate policy implementation challenges and ensure compliance with requirements.

(3) Notifying leadership when an issue is identified that prevents compliance with all or part of a VHA national policy. This includes both barriers to compliance and the piloting of new procedures or programs which would contradict or otherwise fail to comply with VHA national policy.

(4) Complying with the terms outlined in an approved VHA national policy waiver.

(5) Implementing the action plan (developed by the operating unit requesting a policy waiver in consultation with the policy owner) to achieve compliance with the waived policy requirement within the timeframe specified in the plan, where applicable, and notifying leadership when that is not possible.

(6) Notifying leadership when full compliance with the waived policy requirement has been achieved and the waiver is no longer needed.

3. OVERSIGHT AND ACCOUNTABILITY

Oversight refers to the actions taken to guide, control, monitor, and evaluate the organization to help ensure policies are being implemented as intended; programs, projects or activities achieve expected results; and corrective action is taken when noncompliance is identified. Oversight mechanisms for this directive include, but are not limited to:

a. **Internal Control.** An internal control is a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of the entity will be achieved. The internal controls for this directive are:

(1) Leadership oversight as outlined in the responsibilities paragraph of this directive.

(2) Quality control check by policy owners to ensure completeness, accuracy, and validity of the waiver request.

(3) Consideration by the policy requester and the policy owner of the risk of noncompliance with the waived VHA national policy requirement.

(4) Quality control check by OIC of approved waiver requests to ensure the waiver submission contains all required policy waiver elements before uploading as an active waiver on the Waivers to VHA National Policy centralized tracking website at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers>. **NOTE:** *This is an internal VA website that is not available to the public.*

(5) A pathway to appeal denied policy waivers for reconsideration by the VHA upper level leadership position that signed the waived policy to help ensure waiver decisions are fair and compliant with requirements, and policy standards are attainable.

b. **Metrics.** Monitoring is established and operated to assess the quality of performance over time as compared to planned or expected results. The metrics to monitor and assess quality of performance for this directive are:

(1) The number of policy owners reporting to OIC information about their active, denied, and rescinded waivers will be reviewed every 6 months to assess compliance with this directive.

(2) OIC data analysis of all active, denied, and rescinded waivers every 6 months to identify trends, issues, or concerns regarding the waiver request process, the level of risk presented to the VHA organization by active policy waivers, and the attainability of policy standards for reporting to ARCC.

(3) OIC monitoring of the Waivers to VHA National Policy website to ensure that new active waivers received by OIC are posted within 10 business days of receipt, or once any errors in the waiver request identified by the quality check are corrected. The Waivers to VHA National Policy centralized tracking website is located at

<https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers>. **NOTE:** This is an internal VA website that is not available to the public.

4. TRAINING

There are no formal training requirements associated with this directive.

5. RECORDS MANAGEMENT

All records regardless of format (for example, paper, electronic, electronic systems) created by this directive shall be managed as required by the National Archives and Records Administration (NARA) approved records schedules found in VHA Records Control Schedule 10-1. Questions regarding any aspect of records management can be addressed to the appropriate Records Officer.

6. BACKGROUND

a. VHA Central Office regularly receives requests from VHA operating units to waive all or part of a VHA national policy to resolve the causes of noncompliance without triggering negative findings by external or internal oversight bodies. Historically, some VHA program offices and VISNs developed their own unique or ad hoc methods for approving waivers that exempt the requester from compliance with VHA national policy.

b. In 2017, the Government Accountability Office (GAO) identified a variety of challenges that VHA faces when implementing national policy. In particular, GAO found that VHA did not know which VA medical facilities were not implementing certain policies, the reasons why the VA medical facilities were unable to implement the policies, whether these reasons continued to be valid, and how many approved waivers from national policies existed. GAO recommended that VHA “establish a standard policy exemption waiver process and centrally track and monitor approved waivers.” **NOTE:** See GAO-17-748, *Veterans Health Care: Additional Actions Could Further Improve Policy Management*, available at <https://www.gao.gov/products/gao-17-748>.

c. The goal of this directive is to facilitate compliance with VHA national policy to the greatest extent possible while recognizing regional and local barriers to compliance, and supporting innovations that may contradict policy during the trial period (see paragraph 2.d. in Appendix A regarding innovation waivers). This directive will strengthen VHA’s ability to improve national policy, mitigate implementation challenges, and help ensure national policies are implemented as intended.

7. DEFINITIONS

a. **Compliance.** Compliance is actual and meaningful adherence to the requirements of any law, regulation, policy, official operating guidance, or standards applicable to the activity or practice in question.

b. **Oversight Body.** An oversight body is responsible for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This

includes overseeing management's design, implementation, and operation of an internal control system.

c. **Risk.** Risk is the potential for loss, harm, or missed opportunities in relation to achievement of the organization's mission and strategic objectives.

d. **VHA Operating Unit.** VHA operating units are organizational structures with clearly defined spans of control. At VHA Central Office, the operating units are principal offices, program offices and sub offices. For the purposes of this directive, VHA operating units include VHA program offices, CPACs, VISNs, and VA medical facilities. **NOTE:** See VHA Directive 1217, VHA Central Office Operating Units, dated September 10, 2021, for more information about VHA Central Office operating units.

e. **VHA National Policy.** VHA national policy establishes mandatory standards for a definite course of action for VHA and assigns responsibilities for executing that course to identifiable individuals or groups within VHA. VHA national policy addresses matters of VHA-wide significance and is issued under the authority of the Under Secretary of Health; this authority may be delegated as provided in VHA Directive 0000, Delegations of Authority, dated October 11, 2023. VHA national policy is established through either a directive or a notice. VHA national policy must not meet the definition of a "rule" under the Administrative Procedures Act (5 U.S.C. § 551(4)).

f. **Waiver.** A waiver is a written statement that exempts a VHA operating unit from compliance with all or part of a VHA national policy for a specified time period. See Appendix A for scenarios in which a waiver can be requested and obtained. **NOTE:** No waivers are allowed from compliance with policy standards that are based on statutes or VA regulations.

8. REFERENCES

a. 5 U.S.C. § 551(4).

b. 38 U.S.C. § 7301(b).

c. 38 C.F.R. § 2.6(a)(1).

d. VHA Directive 0000, Delegation of Authority for Signature, Oversight and Management of VHA National Policy, dated October 11, 2023.

e. VHA Directive 1030(2), VHA Integrity and Compliance Program, dated December 29, 2020.

f. VHA Directive 1217, VHA Central Office Operating Units, dated September 10, 2021.

g. VHA Audit, Risk and Compliance Committee Charter.

<https://dvagov.sharepoint.com/sites/VACOVHACBI/1030/Support%20Files/Forms/AllItems.aspx>. **NOTE:** This is an internal VA website that is not available to the public.

h. Waivers to VHA National Policy website and related content. <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers>. **NOTE:** *This is an internal VA website that is not available to the public.*

i. GAO-17-748, Veterans Health Care: Additional Actions Could Further Improve Policy Management. 2017. <https://www.gao.gov/products/gao-17-748>.

FRAMEWORK FOR WAIVERS TO VHA NATIONAL POLICY

All Veterans Health Administration (VHA) employees must follow VHA national policies; however, VHA recognizes that issues may impede the ability of a VHA operating unit (e.g., Department of Veterans Affairs (VA) medical facilities, Veterans Integrated Services Networks (VISN), Consolidated Patient Account Centers (CPACs), or program offices) to implement all requirements prescribed in VHA national policy. VHA's framework for obtaining, centrally tracking, and reporting waivers from compliance with all or part of VHA national policy consists of the following components:

1. BARRIERS TO IMPLEMENTATION

Regional and local barriers to VHA national policy implementation that may be considered as the basis for a waiver request include but are not limited to:

- a. Space limitations within VA medical facilities.
- b. A relative lack of availability of personnel in certain geographic regions who could be recruited to VA to provide the service which is the subject of the policy.
- c. Difficulties meeting equipment or information technology needs.
- d. Time that may be required to develop contracts or other arrangements with community care organizations before full compliance can be achieved.
- e. VA medical facility complexity level or location.
- f. Accreditation requirements conflict with requirements in VHA national policy.
- g. New, innovative procedures are being piloted that will contradict or fail to comply with established VHA national policy.
- h. Other local challenges that prevent full implementation of VHA national policy.

2. WAIVER CATEGORIES

The policy owner may grant a waiver to the requesting VHA operating unit in any of the following categories: **NOTE:** *The following sub-categories are also used to further identify the waiver type: Space, Personnel, Equipment or Technology, Contracting, Budget, Facility Complexity Level, Accreditation, Conflicting Requirements, Not Locally Applicable, Prohibited Funding Source, Staff Credentials, Training, Supervision, Operating Hours, Equivalency, IT Modernization, Innovation, Pay Administration, Billing, Quality of Patient Care, Service Disruption, and Other. The sub-categories can help the policy owner determine the appropriate waiver expiration date to assign (within the limits established by the major waiver categories below) by identifying the time it typically takes to resolve that particular type of issue.*

a. **Standard Waiver.** A standard waiver exempts the requesting VHA operating unit from complying with all or part of a VHA national policy when compliance is not possible. Standard waivers are granted and remain in effect through the recertification date of the policy. Examples of a business need justifying the grant of a standard waiver include but are not limited to an inability to comply due to VA medical facility complexity level or space limitations that cannot be corrected.

b. **Temporary Waiver.** A temporary waiver extends the implementation deadline of all or part of a VHA national policy for a specified period of time, generally not to exceed 1 year. Upon expiration, the VHA operating unit may request an extension for a period not to exceed an additional year. Examples of a business need justifying the grant of a temporary waiver include a delay in VHA operating unit construction or a lengthy contracting process.

c. **Equivalency Waiver.** An equivalency waiver exempts the VHA operating unit from compliance with all or part of a national VHA policy if the requesting VHA operating unit demonstrates that it can meet national policy requirements through other procedures or practices. An equivalency waiver may be granted through the recertification date of the VHA national policy.

d. **Innovation Waiver.** An innovation waiver exempts the VHA operating unit from complying with all or part of a VHA national policy to allow time to pilot new procedures or programs which would contradict or otherwise fail to comply with that policy. An innovation waiver is granted for a specified trial period, not to exceed 3 years.

3. WAIVER PROCESS

The waiver process is used by VHA operating units to obtain a waiver from compliance with all or part of a VHA national policy for a specified time period when certain conditions are met. **NOTE:** *No waivers are allowed from compliance with policy standards that are based on statutes or VA regulations. Waiver requests and waiver approvals must not contain sensitive information that is protected from unauthorized disclosure such as Protected Health Information, Personally Identifiable Information, or Controlled Unclassified Information.* The process entails:

a. **Step 1.** A VHA operating unit identifies an issue that prevents them from fully complying with a VHA national policy, and:

(1) With the approval of the VHA operating unit Director, submits a waiver request to the policy owner as outlined in paragraph 2.g.(3) in the body of this directive after reviewing any waiver guidance contained within the policy for which a waiver is requested, any instructions provided by the policy owner, and this directive. Complete the online waiver request template at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/WaiverRequests.aspx> to submit a waiver request, unless the policy owner mandates the use of their own waiver process. **NOTE:** *This is an internal VA website that is not available to the public. Situations when a waiver to VHA national policy is not required are*

identified in Appendix A, paragraph 4. Helpful files for policy waivers can be found at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/FAQs.aspx>. This is an internal VA website that is not available to the public.

(2) The operating unit requesting a policy waiver reports their portion of required policy waiver elements via the Waivers to VHA National Policy centralized tracking website for every new waiver initiated after publication of this directive. **NOTE:** *The online waiver request tool at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/WaiverRequests.aspx> automatically records required policy waiver elements as the waiver moves through the decision-making process. This is an internal VA website that is not available to the public. Follow guidance issued by the policy owner if they maintain their own waiver system and have a different method of collecting the required policy waiver elements.* The required policy waiver elements that must be submitted by the operating unit requesting a policy waiver include:

(a) Name and number of the VHA national policy for which a waiver is being requested.

(b) The specific standard or paragraph(s) of the VHA national policy that requires a waiver when other requirements in the policy can be fully implemented.

(c) Policy owner/program office (name and mail code).

(d) Requesting VISN/CPAC/VA medical facility/program office (name, station number and location) as applicable.

(e) Requesting point of contact (name and email address).

(f) Justification for the waiver request, which must include an explanation of why the VHA national policy requirement(s) cannot be met and whether the requester can provide an equivalent level of compliance by other means.

(g) Waiver Category and Waiver Sub-Category. **NOTE:** *See paragraph 2 in this appendix for the list of available waiver categories.*

(h) The amount of time needed to achieve compliance. **NOTE:** *This can be a date, triggering event (such as “contract awarded” or “construction completed”), or “rescission of national policy.” When a policy is rescinded or recertified, its waivers are automatically rescinded.*

(i) A statement that consideration has been given to the risk of waiving the policy requirement.

(j) A statement of the requester’s acceptance of responsibility to develop an action plan that will bring the waived requirement into compliance within a specified timeframe, if applicable.

(k) A statement of whether labor management obligations were met for the location(s) covered by the waiver if the waived process involves a negotiated practice or triggers a duty to bargain.

(l) Name, title, and signature of the waiver requester.

(m) Name, title, and signature of the VHA operating unit Director who is the sponsor or approver of the waiver request (if different from the waiver requester).

b. **Step 2.** A policy owner receives a request for a waiver to a VHA national policy that it owns, and:

(1) The policy owner reviews the waiver request and makes a decision to approve or deny the waiver as outlined in paragraph 2.f. in the body of this directive.

(2) The policy owner that makes the waiver decision reports their portion of the required policy waiver elements via the Waivers to VHA National Policy centralized tracking website for every new waiver initiated after publication of this directive. **NOTE:** *The online waiver request tool at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/WaiverRequests.aspx> automatically records required policy waiver elements as the waiver moves through the decision-making process. Policy owners that process waiver requests using their own protocols complete this reporting requirement within 30 calendar days after decision-making for all new policy waivers by copying waiver information from their system into the national template at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/Policy-Owners-with-Own-Waiver-Processes.aspx>. This is an internal VA website that is not available to the public. Contact VHAPolicyWaiverRequests@va.gov for assistance with obtaining access to this SharePoint site, if needed.* The required policy waiver elements that must be submitted by waiver approvers include:

(a) Requesting program office, VISN, CPAC or VA medical facility (name, station number, and location).

(b) Name and number of the VHA national policy for which a waiver is being approved or denied.

(c) The specific standard or paragraph(s) of the VHA national policy for which a waiver is being approved or denied.

(d) A statement that consideration has been given to the risk of waiving the policy requirement. **NOTE:** *Waiver requesters are also required to consider the risk.*

(e) A statement about whether the policy owner needs to petition the appropriate governance board for additional resources, modify standards, or update policy to eliminate the need for this type of waiver in the future. **NOTE:** *If yes, appropriate action must be taken if needed, as outlined in paragraph 2.f.(6).(a).4 in the body of this directive.*

(f) Is the waiver approved? If yes, provide the waiver expiration date and any additional comments. If no, provide the reasons for disapproval.

(g) Name, title, and signature of the waiver approving official.

(3) If approved, the waiver is active until the expiration date. As outlined in paragraph 2.f. in the body of this directive, approved waivers must include a date or triggering event at which point the waiver will expire or be rescinded. **NOTE:** *Active waivers are maintained at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/Active-Waivers.aspx>. This is an internal VA website that is not available to the public.*

(4) If the waiver request is denied, the policy owner must provide the decision and the reason for waiver denial directly to the requester. The policy owner can reply in the online waiver request system or send a decision memorandum or email from their office to the requester with a copy to OIC at VHAPolicyWaiverRequests@va.gov within 7 calendar days after denial. The decision to deny a waiver is at the policy owner's discretion and may be dependent upon national program objectives, legal or regulatory requirements, adequacy of the justification, quality of the action plan, whether sufficient information was received from the requester to make an informed decision, or other considerations. If the requester wants to contest the denial, the VHA operating unit Director must submit a written appeal to OIC for transmittal to the VHA upper level leadership position that signed the waived policy for a final determination. VA medical facilities must go through the VISN Director to file an appeal. **NOTE:** *The Waivers to VHA National Policy centralized tracking website is at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers>. This is an internal VA website that is not available to the public.*

c. **Step 3.** OIC publishes active waivers received from policy owners within 10 business days of receipt or after all errors have been corrected, as outlined in paragraph 2.d. in the body of this directive. **NOTE:** *Active waivers are maintained at <https://dvagov.sharepoint.com/sites/VACOVHACBI/VHAPolicyWaivers/SitePages/Active-Waivers.aspx>. This is an internal VA website that is not available to the public.*

d. **Step 4.** OIC reports data on all active, denied, and rescinded waivers to VHA upper level leadership at ARCC every 6 months. ARCC reviews data on all waivers as outlined in paragraph 2.e. in the body of this directive. Consideration must be given to the level of risk presented to the organization, if any, by the active waivers and whether the risk is acceptable. ARCC makes decisions or recommendations when concerns and deficiencies are identified as a result of the data review, which must be documented in ARCC meeting minutes.

e. **Step 5.** A waiver expires at the date or triggering event stated on the waiver. **NOTE:** *If no date or event is listed, the waiver will automatically be rescinded when the waived VHA national policy is rescinded or recertified.*

(1) The requester must inform the policy owner when the triggering event has been satisfied or if the VHA operating unit has otherwise achieved full compliance with the previously waived VHA national policy. Once conditions in the waiver request have been met, the policy owner must rescind the waiver and notify the requester and OIC via email at VHAPolicyWaiverRequests@va.gov as outlined in paragraph 2.f. in the body of this directive.

(2) The policy owner and requester must adhere to the responsibilities stated in paragraphs 2.f. and 2.g. in the body of this directive pertaining to waiver expirations and extensions.

4. SITUATIONS WHEN A WAIVER TO VHA NATIONAL POLICY IS NOT REQUIRED

In a limited number of situations, a waiver to VHA national policy as described in this directive may not be required. Contact the policy owner for additional guidance or clarification.

a. A waiver is not required to cover the period of noncompliance between the time an internal or external oversight entity (e.g., Office of Inspector General, Office of Medical Inspector) identifies a finding and its resolution if the corrective action plan is tracked through completion by the office that made the finding. Examples include findings from investigations, audits, evaluations, incidents, and reviews.

b. If noncompliance with a VHA national policy is identified and it is determined that it can be corrected within 30 calendar days of identification, notification to the policy owner is required via email. With the permission of the policy owner, this notification will act as a temporary grace period from compliance which expires 30 days from acknowledgement. Information in the notification must include the reason for noncompliance, the interim risk mitigation strategy, and the overall plan for achieving compliance.

c. Waivers from compliance with engineering requirements such as building codes and mechanical or structural technical specifications must follow the process outlined by the Office of Healthcare Engineering. Engineering waivers can remain in effect beyond the recertification date of the policy and may be in effect for the entire lifetime of the building or structure. An example of a business need justifying the granting of an extended engineering waiver includes requirements that cannot be met without major construction or building replacement.

d. Waivers from compliance with pharmacy service requirements must follow the process outlined by Pharmacy Benefits Management Service.

e. A waiver is not required if an *administrative* position is required by policy and the personnel vacancy is actively being recruited. However, an interim mitigation strategy must be considered (such as appointing an acting or detailed employee to cover the duties). A waiver is required if the vacancy will not be filled or if recruitment is postponed. Vacancies in *clinical* positions that are mandated by policy may require a

waiver along with an interim mitigation strategy and an action plan for coming into compliance. Contact the policy owner for guidance in this situation.

f. This directive outlines the process for waivers to VHA national policy. This directive is not applicable to waiving compliance with the requirements found in local policies, standard operating procedures, practice guidelines, operational memoranda, VA Central Office policies, Federal or State laws, or VA regulations.