



Department of Veterans Affairs Office of Inspector General

Improper Use of Title 38 Section 8153 Contracts to Fund Educational Costs of the Graduate Medical Education Programs of Affiliated Schools of Medicine

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Executive Summary

The Office of Inspector General (OIG) Office Of Contract Review, initiated a review of the Department of Veterans Affairs (VA), Veterans Health Administration's (VHA) Handbook 1400.10 titled, Health Care Resources Contracting: Educational Costs of Physician and Dentist Resident Training Pursuant To Title 38 United States Code 8153. VHA Handbook 1400.10 instituted new policy allowing VHA facilities with affiliated Schools of Medicine to execute contracts to pay educational costs of an affiliated Schools of Medicine (SOM) costs related to the affiliate's physician and dentist resident training programs. This handbook was signed on November 16, 2012, by the Under Secretary for Health.

Our review determined that the contracts awarded pursuant to VHA Handbook 1400.10 are not valid FAR based contracts because there are no commodities or services rendered as a result of the contract. The prescribed statement of work contained in the Handbook which is generally utilized in the awarded contracts is merely a listing of costs incurred by the affiliated School of Medicine of which VA agrees to pay a pro rata share. VA's share of these costs is determined by a calculated ratio that is based on the amount of time medical residents spend at VA. Medical residents are compensated by VA for their time at VA through disbursement agreements with the affiliate. We also determined that the contracting authority cited by VHA Handbook 1400.10, 38 U.S.C. § 8153, does not contain any provisions allowing VA to share in an affiliate's indirect educational costs. Therefore, we concluded that the handbook and contracts awarded to date are not valid Federal Acquisition Regulation (FAR) based contracts but simply represent a mechanism to fund VA's affiliated Schools of Medicine. We also determined that no authority exists in 38 U.S.C. § 8153, or anywhere else, that allows VA to enter into a contract to fund or share in the educational costs incurred by an affiliated School of Medicine.

VHA Handbook 1400.10 was also a substantial change in VA's historical policy of not funding the indirect and overhead costs of an affiliated SOM. VA provides significant funding to its affiliated Schools of Medicine in two main program areas: funding of resident positions (resident disbursement agreements) and contracts for physician services awarded under 38 U.S.C. § 8153. We found that many of the cost items contained in VHA Handbook 1400.10 and allowed in the awarded educational cost contracts are expressly prohibited in the resident disbursement agreements. VA Directive 1663, which sets forth policy governing sole-source procurements with an affiliated SOM to purchase healthcare resources, not residents, also expressly prohibits the inclusion of indirect costs. VHA Directive 1400.10 also ignores the fact that VA incurs its own significant indirect costs related to education by formally participating in accredited training programs.

The draft of this report was sent to the Interim Under Secretary for Health on January 23, 2015. On April 13, 2015, the Interim Under Secretary for Health provided us with VHA's management comments. The Interim Under Secretary for Health did not concur on any of our conclusions based on an opinion from the Office of General Counsel (OGC). In response to our request, VHA provided an Issue Paper prepared by OGC and dated April 9, 2015 which was the basis for their non-concurrence. VHA's and OGC's comments were not fully responsive to our conclusions and the bases for our conclusions. For example, neither VHA nor OGC identified any goods or services that are being procured that would support that these contracts are valid FAR based contracts. After receiving the Issue Paper, we prepared a response and provided it to OGC on May 19, 2015. We also met with OGC on June 9, 2015, in an attempt to resolve the conflicts but without success.

VHA and OGC did not provide support that the educational costs described in VHA Handbook 1400.10 are within the statutory definition of *healthcare resources* authorized by Section 8153, which allows VHA to enter into sole-source FAR based contracts with the affiliate when the healthcare resource is a commercial service, the use of medical equipment or space, or research to an affiliated institution. Costs incurred by an affiliated SOM to manage its residency program are not commercial services. In the June 9, 2015, meeting, OGC opined that VHA was purchasing "accreditation," which is not accurate. It is the SOM's residency program that is accredited by the Accreditation Council for Graduate Medical Education, not VA. Neither VHA nor OGC addressed the fact that it has been their position since 1997 that Section 8153 contracts cannot be used for residents.

VHA and OGC relied on Title 38 U.S.C., Section 7406(c) as the basis for authorizing the payment of these educational costs. These costs are not specifically authorized under Section 7604(c) and are specifically prohibited under VA Handbook 1400.05, which implements Section 7604(c). OGC and VHA did not provide any support or facts for their non-concurrence with our finding that payment of the educational costs described in VHA Handbook 1400.10 is inconsistent with long-standing VA policy not to pay these costs. If these costs are authorized under Section 7604(c), VA should amend VA Handbook 1400.05 and pay the costs through the disbursement agreements. Our complete response and rebuttal to VHA's OGC's statements and assertions is in Appendix E.



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Introduction

Purpose

The Office of Inspector General (OIG) Office of Contract Review, initiated a review of the Department of Veterans Affairs (VA), Veterans Health Administration's (VHA) Handbook 1400.10, which was issued on November 16, 2012, after we received a request to perform a pre-award review of a proposal for an educational cost contract. Our purpose in conducting the review was to determine the validity of the policy set forth in VHA Handbook 1400.10 and the legality of the contracts awarded pursuant to VHA Handbook 1400.10.

Background

On November 16, 2012, the Under Secretary for Health issued VHA Handbook 1400.10 titled, Health Care Resources Contracting: Educational Costs of Physician and Dentist Resident Training Pursuant To Title 38 United States Code 8153. The purpose section of the handbook states:

This Handbook details the procedures to use a *contract* mechanism for the selective, pro-rated *payment of educational costs* of physician and dentist resident training to the sponsors of affiliated programs under which physician or dentist residents participate in providing health care services to VA beneficiaries. (*Emphasis added*).

In August 2014, the VA Office of Inspector General (OIG) received its first request for a pre-award review for an educational cost proposal as outlined in VHA Handbook 1400.10. VA Directive 1663 requires an OIG pre-award review for all sole-source contracts with a total value of \$500,000 or more awarded to affiliated institutions under the authority of 38 U.S.C. § 8153. The authority cited in VHA Handbook 1400.10 for educational cost contracts with affiliates is 38 U.S.C. § 8153. Our review of data maintained by VHA's Medical Sharing Office identified nine other educational cost contracts awarded/proposed since implementation of VHA Handbook 1400.10 (see Appendix A). The contracts were awarded with a base year and two 1-year options for a total of three years. The total value of the eleven contracts/proposals is \$3,734,942. It is not known whether the data is complete.

Scope and Methodology

We reviewed two proposals and nine awarded contracts. The proposals and contracts are identified in Appendix A. All eleven proposals and contracts followed the policy contained in VHA Handbook 1400.10. All eleven generally used the prescribed Statement of Work as well as the recommended cost schedule contained in VHA Handbook 1400.10 (see Appendix B and Appendix C). We also discussed the policy with VHA managers in procurement as well as the Office of Academic Affiliations.

Results and Conclusions

I. Educational Cost Contracts Awarded Using VHA Handbook 1400.10 are not Valid FAR Contracts

Federal Acquisition Regulation (FAR) defines a contract as a vehicle to obtain *supplies* or *services*. (*Emphasis added*). FAR 1.102(a) states that “The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer...” FAR 2.101 defines a contract as “a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them.” FAR 2.101 also states that “ ‘contracting’ means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources.” VHA is not buying supplies or services under these contracts.

Our review of VHA Handbook 1400.10 and the standard Performance Work Statement (PWS) used in all nine contracts as well as the proposed contract found that there is no identified product or service to be provided to VA. VHA Handbook 1400.10 states that the purpose of the contracts is to pay affiliated institutions a pro rata share of costs incurred by the affiliated institution to train the residents. The PWS contains the following language related to the affiliate’s obligations:

...that the affiliate have and maintain an accredited graduate medical education program. VA will be responsible for a pro-rata share of such educational costs and render payment to Affiliate for support provided.

The PWS further states in the contractor responsibility section:

In order for an affiliate to maintain and administer a properly accredited graduate medical education program, an Affiliate incurs certain costs. Affiliate shall provide the following support for graduate medical trainees assigned to the VAMC (either by providing support direct or, as appropriate, paying the appropriate third party to provide for such items). Indicate below each proposed service to be supplied by the Affiliate:

What follows in the PWS is not a list of services for VA, but a list of costs the affiliate represents were incurred that VA will reimburse an affiliate under the contract. Some examples of the identified costs include:

- American College of Graduate Medical Education (ACGME) accreditation fees;
- National Resident Match Program participation fees
- In-service examination fees;
- Residency program management software fees;

- Other software fees;
- Recruitment costs;
- ACLS (Advanced Cardiovascular Life Support) training and recertification costs
- ATLS (Advanced Trauma Life Support) costs
- Mobile communication devices;
- Other items such as board fees, AMA dues, lab coats, etc.

The items on the list do not represent services to VA but costs the affiliate represents were incurred in administering their graduate medical training program. It is disingenuous to state that VA requires an affiliate to maintain an accredited program as it is the affiliate's primary mission and program as a SOM. VA is merely a participating institution in the affiliate's accredited program. VA does not own or manage the program nor does the affiliate's accredited graduate program exist because of VA. Rather, VHA is identified as a participant for the medical schools to provide the experience and training needed for accreditation of its program by ACGME. Therefore, because the affiliated Schools of Medicine do not provide any service to VA under these contracts, these contracts do not qualify as a FAR based contract.

II. No Authority Exists For Educational Cost Contracts

VHA Handbook 1400.10 cites Title 38 U.S.C. § 8153 as the sole authority for VA to enter into an agreement to reimburse an affiliated SOM's educational costs. However, 38 U.S.C. § 8153 does not grant any authority for VA to reimburse an affiliate the educational costs related to the affiliate's accredited graduate medical education programs. In fact, § 8153 does not mention or otherwise authorize its use to pay for education costs. Section 8153 states, "To secure health-care resources which otherwise might not be feasibly available or to effectively utilize certain other health-care resources..." Section 8153 also authorizes sole-source contracts with affiliated institutions, "If the health-care resource required is a commercial service, the use of medical equipment or space, or research . . ." Title 38 U.S.C. § 8152 defines a "health-care resource" as hospital care and medical services, any other health-care service, and any health-care support or administrative resources. It does not include any references to educational costs incurred by affiliates to maintain its residency training program.

The policy is also inconsistent with VA Directive 1663, which was issued to establish policy and responsibilities for implementing and managing sharing agreements awarded under § 8153. Consistent with the statutory authority of § 8153, this policy limits the use of the sole-source authority in § 8153 for the purchase of services of clinicians whenever education and supervision of graduate medical trainees is required. Neither the policy nor the statute authorizes the use of § 8153 to purchase the services of residents or other trainees, much less pay the affiliate a pro rata share of educational costs incurred in their training programs.

Therefore we conclude that VA has no legal authority under 38 U.S.C. § 8153, or any other statute, to enter into agreements with an affiliated SOM for the purpose of reimbursing the affiliate indirect educational costs related to its graduate medical education. As discussed below, costs for residents and other trainees who provide services to VA are paid for under disbursement agreements. The policies relating to disbursement agreements are set forth in VA Handbook 1400.05.

III. VHA Handbook 1400.10 Is Inconsistent With and Circumvents Existing and Long-Standing VA Policy

VA historically has had policy in place that prohibited VA from subsidizing the educational and administrative costs of its affiliated Schools of Medicine. The payment of educational costs have been prohibited in the two main program areas with affiliated Schools of Medicine: (1) disbursement agreements for payment for residents (set forth in VHA Handbook 1400.05); and, (2) sole-source contracts for physician services under 38 U.S.C. § 8153 (set forth in VA Directive 1663). Payment of an affiliate's indirect educational costs is not permitted under the rules for establishing resident disbursement agreements. In fact, VHA Handbook 1400.05, Disbursement Agreements Procedures, specifically disallows these costs when establishing disbursement agreements for residents at VA. Section 16.d. titled *Non-reimbursable Items* states:

- (1) Non-reimbursable items are general administrative costs, which do not need to be included in disbursement agreements. These include, but may not be limited to:
 - (a) The costs associated with mandatory orientation and training programs (such as Advanced Cardiac Life Support (ACLS)),
 - (b) E-mail services,
 - (c) Residency management software applications,
 - (d) In-service exams, and
 - (e) Program accreditation.

- (2) The following items are not reimbursable under a disbursement agreement:
 - (a) Administrative support;
 - (b) Accreditation site visit charge;
 - (c) Accreditation Council for Graduate Medical Education per-resident assessment;
 - (d) Cost of attendance at medical meetings and special education courses;
 - (e) E-mail services;
 - (f) In-service exams;
 - (g) Indirect costs of resident education;
 - (h) Mandatory orientation;
 - (i) National Resident Matching Program participation charge;
 - (j) Pagers, cell phones or Blackberries;
 - (k) Program accreditation;
 - (l) Purchase of education materials, e.g., books, tapes, and software;
 - (m) Residency Management software;
 - (n) Training programs (such as ACLS); or
 - (o) Tuition and registration fees.

These costs are also prohibited under sole source contracting under 38 U.S.C. § 8153. VA Directive 1663 specifically states in Section 4.b.(2)(a) that unallowable costs include “general department or university overhead and other indirect costs,” and that the “primary principle is for VA to reimburse the Affiliate for all *direct* expenses associated with the contracts” (*emphasis added*).

VHA Handbook 1400.10 is inconsistent with current and long-standing VA policy. The Handbook essentially creates an unauthorized expectation for VA’s affiliated SOMs; namely, that VA will now subsidize the administrative and indirect costs of the affiliated Schools of Medicine graduate medical training programs. The new policy set forth in VHA Handbook 1400.10 allows an affiliate to merely list certain costs and VA will pay the educational costs based on a ratio of time residents rotate through VA. This type of agreement is simply a funding mechanism for an affiliated SOM and as discussed above, is done without any statutory or regulatory authority.

Conclusions

Our review of the policy set forth in VHA Handbook 1400.10 found that the agreements are not valid FAR based contracts as there is no defined commodity or service that is being procured or any defined deliverable. The agreements are simply an unauthorized mechanism to fund indirect costs incurred by an affiliated SOM. We also found that the cited authority, 38 U.S.C. § 8153, does not include any provision for VA to fund or subsidize the indirect costs of VA's affiliated Schools of Medicine. VHA Handbook 1400.10 is inconsistent with and appears to allow VHA to circumvent long-standing VA policy because it provides a mechanism for VA to pay for costs that are not authorized by law and expressly prohibited in other VA policies, including VHA Handbook 1400.05 and VA Directive 1663.

Recommendations

We recommend that the Interim Under Secretary for Health:

1. Rescind VHA Handbook 1400.10.
2. Terminate existing contracts for indirect educational costs awarded under the guidance of VHA Handbook 1400.10.

Acronyms

ACGME—Accreditation Council for Graduate Medical Education

ACLS—Advanced Cardiovascular Life Support

AMA—American Medical Association

ATLS—Advanced Trauma Life Support

CO—Contracting Officer

FAR—Federal Acquisition Regulation

GME—Graduate Medical Education

OCR—Office of Contract Review

OGC—Office of General Counsel

OIG—Office of Inspector General

PWS—Performance Work Statement

SOM—School of Medicine

SOW—Statement of Work

U.S.C.—United States Code

VA—Department of Veterans Affairs

VAMC—Veterans Affairs Medical Center

VHA—Veterans Health Administration

Value of Nine Educational Cost Contracts and Two Proposals

Affiliate	Contract/Solicitation #	Base Year	Option Year 1	Option Year 2	Total
University of New Mexico	VA258-14-C-0048	\$133,593	\$137,465	\$141,453	\$412,511
Duke University	VA246-14-C-0207	125,031	125,031	125,031	375,093
Indiana University	VA251-14-C-0013	117,696	117,696	117,696	353,088
Loma Linda University	VA262-13-C-0151	98,625	98,625	98,625	295,875
SUNY Health Science Ctr.	VA243-15-C-0022	113,232	79,259	79,259	271,750
University of Utah	VA259-13-C-0353	89,796	89,796	89,796	269,388
University of Tennessee	VA249-14-C-0239	85,702	86,625	87,927	260,254
MUSC (South Carolina)	VA247-15-C-0017	80,333	80,333	80,333	240,999
University of Buffalo	VA528-14-C-0100	29,387	58,774	58,774	146,935
Oregon Health & Science University	VA260-14-R-0376 ¹	239,446	239,446	239,446	718,338
SUNY Upstate	VA259-13-R-0606 ¹	130,237	130,237	130,237	390,711
Total					\$3,734,942

Note 1: These two were not yet awarded; therefore, their values were estimated.

Sample Performance Work Statement

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SAMPLE PERFORMANCE WORK STATEMENT (PWS)

1. PURPOSE. This is a health care resources contract between [name of Department of Veterans Affairs (VA) Medical Center or VA Health Care System] (hereafter referred to as the "VAMC") and [name of affiliate or Sponsoring Institution] (hereafter referred to as the "Affiliate"), an institution affiliated with VAMC, requiring Affiliate to provide health care resources consisting of commercial services for maintenance of an accredited graduate medical or dental education program. Where residents from the affiliated institution are providing health care services to VA beneficiaries at the VAMC, the VAMC requires that the affiliate have and maintain an accredited graduate medical or dental education program. VA will be responsible for a pro-rata share of such educational costs and render payment to Affiliate for these services provided.

2. BACKGROUND AND DEFINITIONS. Affiliate administers and maintains accredited graduate medical education programs under which [physician or dentist] residents receive training and participate in providing health care services to VA beneficiaries at VAMC in accordance with the following executed agreements:

a. **Definitions**

(1) **Affiliation Agreement.** Affiliation agreement is the agreement dated [insert date] between Affiliate and VAMC establishing an affiliation in accordance with title 38 United States Code (U.S.C.) 7302 relating to a graduate medical or dental education program sponsored by the Affiliate through which graduate medical or dental trainees provide health care to beneficiaries of VAMC. An affiliation agreement, duly approved and signed by the Chief Academic Affiliations Officer (10A2D), is a pre-requisite for entering into a health care resources contract in support of graduate medical or dental education. *NOTE: In most cases, the "affiliate" and the "sponsoring institution" are the same. If, however, the "sponsoring institution" (i.e., the institution listed by the accrediting body as responsible for the graduate medical or dental education programs) is a separate entity (e.g., a university hospital) from the primary affiliate (e.g., a medical school), then there must be an affiliation agreement with the sponsoring institution or it must be listed as a participant on the affiliation agreement with the primary affiliate. "Affiliate," in this agreement, is taken to refer to either the primary affiliate or the sponsoring institution. The entity named as the "affiliate" should be the institution that is responsible for all costs pertaining to graduate medical or dental education.*

(2) **Disbursement Agreement.** Disbursement agreement is the agreement between Affiliate (and/or its Disbursing Agent) and VAMC relating to payment of stipends, fringe benefits [and other allowable costs] for medical and dental residents participating in Affiliate's graduate medical or dental training program and assigned to VAMC.

(3) **Program Letter Agreement (PLA).** PLA is the agreement between Affiliate and VAMC supplementing the Affiliation Agreement and establishing policies and procedures for, and providing other information about, the specific graduate medical or dental education program through which graduate medical or dental trainees provide care to beneficiaries of VAMC.

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(4) **Resident.** The term “resident” refers to an individual who is engaged in an accredited graduate training program for physicians or dentists and who participates in patient care under the direction of supervising practitioners. *NOTE: For the purpose of this solicitation, the term “resident” includes individuals in their first year of training sometimes referred to as “interns” and individuals in approved subspecialty graduate medical or dental education programs also referred to as “fellows.”*

b. The Affiliate provides certain services and incurs certain costs to administer its accredited training program for graduate medical or dental trainees, including those residents assigned to VAMC. It is mutually beneficial to the parties for the Affiliate to provide administrative and other services (e.g., maintenance of accreditation) for the graduate medical or dental training program in a consistent and continuous manner. Section 8153 of 38 U.S.C. provides authority for VAMC to pay a pro-rata share of the cost of the health care resources, as defined by 38 U.S.C. 8152, including health care support and other administrative resources provided by Affiliate as these costs are non-severably related to the maintenance and support of a properly accredited graduate medical or dental training program and the health care services provided by residents thereunder.

3. SERVICES TO BE PROVIDED BY AFFILIATE. In order for an affiliate to maintain and administer a properly accredited graduate medical or dental training program, an Affiliate incurs certain costs.

a. Affiliate must provide the following for graduate medical or dental trainees assigned to the VAMC (either by providing services directly or, as appropriate, paying the appropriate third party to provide for such items).

b. All determinations must be calculated annually and based upon the proportionate share of residents that actually rotate to the VAMC. These costs may be estimated, not to exceed a price ceiling, at the beginning of the academic year.

(1) For fixed costs, such as accreditation fees, by dividing the positions of scheduled VAMC-paid or reimbursed residents by the total resident positions in a program times the total cost of the item.

(2) For variable costs, number of resident positions rotating to the VAMC times the per resident position cost of the specific item.

(3) Pro-rated program costs must be rolled up to the institutional level and standardized across programs, whenever possible. The basis for the pro rata determination of the aggregate costs for each item included must be provided to the VAMC contracting officer for review. This contract mechanism is not applicable to individual programs and may only be used for contracts with a sponsoring institution – only one contract per sponsoring institution allowable. Total annual estimated costs per item are used to calculate a per resident position annual rate.

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c. Indicate below each proposed service to be supplied by the Affiliate:

() Accreditation fees, including per program annual assessments and per resident fees for use of online procedure logs imposed by one or more of the following accrediting body:

- Accreditation Council for Graduate Medical Education (ACGME)
- American Osteopathic Association (AOA)
- Other (identify the name of approved accrediting body _____)

() National Resident Match Program participation fees

() In-service examination fees

() Residency program management software fees for:

- New Innovations
- E*Value or
- Other (list other software _____)

NOTE: Fees for these software programs may only be included in this contract if VAMC-based professional staff have access to the resident and program-specific data in these applications on a "need to know" basis.

() Advanced Cardiac Life Support (ACLS) training and recertification.

() Other required training courses, as follows:

(List all training courses supplied by affiliate and covered in this contract)

() Mobile communication devices such as pagers, cell phones, and PDAs. *These costs should not be included if VAMC provides these devices directly to graduate medical trainees.*

() User fees for simulation center located at Affiliate (or indicate other location and provide physical location).

() Other items listed below:

NOTE: All "other" items must be specifically listed to be covered by this contract. Only items approved by the VA Office of Academic Affiliations and the Office of Business Oversight may be included in this contract. In no event may any cost covered by the Disbursement Agreement or any other agreement or contract between VAMC and Affiliate (such as a medical sharing clinical service contract) be included in this contract.

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VA cannot reimburse licensing fees, licensing examination (e.g., USMLE) fees, Board examination fees, or program administration expenses, (see subpar. 12a(7) of this Handbook for other items not covered by VA).

4. TERM OF CONTRACT

The resultant contract is a fixed price contract with economic price adjustment (EPA). This contract is effective 1 year from date of award plus two (2) 1 year options that may be exercised by the VAMC. [Use as an insert – for base+X options.]

5. PAYMENT BY VAMC. In consideration of the services provided by Affiliate as listed in paragraph 3 of this Appendix, VAMC agrees to make payments to the Affiliate as follows:

- a. A fiscal obligation must be established by VAMC to be provided to the Affiliate and approved by VAMC.
- b. Payments must be made in arrears upon receipt of a properly prepared invoice and reconciliation against VAMC records. Each invoice must include a computation of the total resident positions (including fractions thereof) filled by graduate medical or dental trainees during the year being billed (which shall be calculated in a manner consistent with the method established in the executed Disbursement Agreement – see VHA handbook 1400.05). Records from the Disbursement Agreement management would be used to determine the total positions over the course of the year.
- c. The amount of each annual payment shall be calculated by multiplying the total number of graduate medical or dental trainee filled positions by the annual rate stated in the pricing schedule.

Sample Cost Schedule

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SECTION B – CONTINUATION OF STANDARD FORM (SF) 1449 BLOCKS

SCHEDULE OF PRICES AND DESCRIPTION OF SERVICES

Price proposal submission instructions must direct that the affiliated entity include all supporting documents that identify the actual costs associated to the individual contract line item number (CLIN). Examples of such documents include executed Affiliate agreements, number of residents in the program, and other information necessary to support the pro-rata costs proposed.

CLIN	Description	QUANTITY	TOTAL ANNUAL
0001	Educational costs and other costs allowable (identify-fill-in).	Identify the actual number of resident positions filled (fill-in).	Estimated sum total for annual year (fill-in).

Base year – date of award through September 30, 2012

CLIN	Description	QUANTITY	TOTAL ANNUAL
1001	Educational costs and other costs allowable.	Identify the actual number of resident positions filled.	Estimated sum total for annual year.

Option Year One – October 1, 2011 through September 30, 2013

CLIN	Description	QUANTITY	TOTAL ANNUAL
2001	Educational costs and other costs allowable.	Identify the actual number of resident positions filled.	Estimated sum total for annual year.

Option Year Two – October 1, 2012 through September 30, 2014

CLIN	Description	QUANTITY	TOTAL ANNUAL
3001	Educational costs and other costs allowable.	Identify the actual number of resident positions filled.	Estimated sum total for annual year.

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Sample Cost Schedule

Educational Cost Worksheet
Includes only those programs that rotate to VAMC

Name of Sponsoring Institution: Duke
Name of VAMC/HCS: Durham VAMC

Cost Category Description	AY 2012-13 Costs	AY 2012-13 Total Filled VA positions	AY 2012-13 Total filled positions at sponsor	AY 2012-13 % VA of Sponsor's Total filled positions	AY 2012-13 VA's pro rata share of cost	AY 2012-13 OAA approval [OAA use only]	Types of Documentation that will ultimately be required by the Contracting Officer (CO) - but not required for OAA review†	
Accreditation Fees (ACGME)	\$133,600	126.71	711.00	[see tab]	\$31,980.00	per policy	Invoice from ACGME	
National Residency Match Program (NRMP) Subscription Fees	\$9,120	126.71	936.00	[see tab]	\$4,560.00	per policy	Invoice from NRMP	
In-service examination fees	\$88,641	126.71	711.00	[see tab]	\$17,007.00	per policy	Invoices from vendors	
Residency program management software fees (Med Hub)*	\$159,875	126.71	711.00	[see tab]	\$28,510.00	per policy	Invoice from E-value	
User fees for simulation centers**	\$48,732	126.71	711.00	[see tab]	\$8,237.00	per policy	simulation center fee schedule and usage	
Required training [Specify - e.g., Advanced Cardiac Life Support (ACLS) and recertification]	\$39,778	126.71	711.00	[see tab]	\$11,150.48	per policy	invoice from ACA or other vendor	
Mobile communication devices [Specify type: e.g., pager, cell phone, if not provided by VA - and cost basis]***	\$20,527	126.71	711.00	[see tab]	\$20,527.00	per policy	Invoice from telecommunications	
Recruitment costs, exclusive of travel, meals, & entertainment	\$6,405	126.71	711.00	[see tab]	\$3,060.00	per policy	invoice from printer (e.g., for brochures) or post office (for postage)	
Other (list with justification; requires OAA approval; insert extra lines as necessary):								
Total Educational Cost: \$606,776.38							VA Share: \$125,031.48	†Note: It is not necessary to submit unless requested at this point in time. Supporting documents are required when processed through the contracting office. Documentation (invoices, etc.) is subject to review by VA contracting officials. Actual amounts approved may change during the contracting process.

*E.g., New Innovations, E*Value, etc. Assumes VA staff have access to data on a 'need to know' basis
**Provided an equivalent simulation experience is not available on-site at the local VA facility

Note: specify the basis for fees. E.g., per hour, per department assessment, or other. Assessment may need to reflect actual usage by residents assigned to the VA, rather than a pro rata assessment
***E.g., Mobile Communication devices at \$61.00 per resident per year.

NOTE: use of the extra tabs for justification and greater description of items is optional but may be useful for the OAA and contracting staff reviewing your proposed cost estimates.

Reviewed:	10-Oct-13	
Signed:	+	
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Management Comments

**Department of
Veterans Affairs**

Memorandum

Date: **APR 13 2015**

From: Interim Under Secretary for Health (10)

Subj: Office of Inspector General (OIG) Draft Report: Review of Educational Cost Contracts Awarded Pursuant to VHA Handbook 1400.10 (VAIQ 7579630)

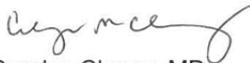
To: Director, Healthcare Resources Division, Office of Contract Review (55)

1. Thank you for the opportunity to review the draft report. I do not concur with the report's findings and provide the following comments in response to OIG's recommendations.
2. The Veterans Health Administration (VHA) issued VHA Handbook 1400.10, Educational Cost Contracts of Physician and Dentist Resident Training Pursuant To Title 38 United States Code (U.S.C.) 8153, with the full concurrence and approval of VA's Office of General Counsel (OGC) on November 16, 2012. VHA has consulted with the OGC following the issuance of the OIG's draft report and its recommendations.
3. The effect of the Handbook is a reasonable extension of the sole source authority contained in 38 U.S.C. § 8153(a)(3)(A) allowing VA to acquire a health-care resource from an affiliated institution. The term "health care resource" as defined in the statute includes "any health-care support or administrative resource," 38 U.S.C. § 8152. While separate Disbursement Agreements (see VHA Handbook 1400.05) cover residents' salaries, affiliated institutions have additional costs associated with maintaining a properly accredited residency training program that VA directly benefits from for which there are no other competitive sources. The major underlying purpose of contracting with affiliated institutions is the facilitation of these residency training education programs.
4. VHA Handbook 1400.10 makes clear that the rate of reimbursement for a negotiated health care resources contract for the educational costs of Graduate Medical Education (GME) or Graduate Dental Education (GDE) must be pro-rated based upon the total number of VA filled positions divided by the total number of resident positions in comparable GME or GDE programs at the affiliate, and each facility needs to decide on a case-by-case basis which cost category to include (VHA Handbook 1400.10 pp. 4-5). The Handbook also specifies categories of costs that may be reimbursed through these contracts. All categories specified are allowable costs that VA could pay for under 38 U.S.C. § 7406(c)(2)(D).

Page 2.

OIG Draft Report, Review of Educational Cost Contracts Awarded Pursuant to VHA Handbook 1400.10

5. The Handbook expressly states that certain costs may not be reimbursed. These include (but are not limited to) administrative expenses relating to program support services and supplies, recruitment or orientation expenses, and faculty salaries or benefits.
6. VHA facilities have a longstanding history of contributing to the educational costs of affiliates. VHA Handbook 1400.10 did not represent a policy change for the Department of Veterans Affairs. Rather, 1400.10 merely standardized the mechanisms for cost sharing, using the mechanism that was determined by OGC to be the most appropriate.
7. If you have any questions, please contact Karen Rasmussen, Director, Management Review Service (10AR) at VHA10ARMRS2@va.gov.


Carolyn Clancy, MD

Attachment

VETERANS HEALTH ADMINISTRATION (VHA)
Action Plan

OIG Draft Report, Review of Educational Cost Contracts Awarded Pursuant to
VHA Handbook 1400.10

Date of Draft Report: January 23, 2015

Recommendations/ Actions	Status	Completion Date
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Recommendation 1. We recommended the Interim Under Secretary for Health
rescind VHA Handbook 1400.10

VHA Comments: Non-concur. The Veterans Health Administration (VHA) issued VHA Handbook 1400.10, Educational Cost Contracts of Physician and Dentist Resident Training Pursuant To Title 38 United States Code (U.S.C.) 8153, with the full concurrence and approval of VA's Office of General Counsel (OGC) on November 16, 2012. VHA has consulted with the OGC following the issuance of the OIG's draft report and its recommendations.

The effect of the Handbook is a reasonable extension of the sole source authority contained in 38 U.S.C. § 8153(a)(3)(A) allowing VA to acquire a health-care resource from an affiliated institution. The term "health care resource" as defined in the statute includes "any health-care support or administrative resource," 38 U.S.C. § 8152. While separate Disbursement Agreements (see VHA Handbook 1400.05) cover residents' salaries, affiliated institutions have additional costs associated with maintaining a properly accredited residency training program that VA directly benefits from for which there are no other competitive sources. The major underlying purpose of contracting with affiliated institutions is the facilitation of these residency training education programs.

VHA Handbook 1400.10 makes clear that the rate of reimbursement for a negotiated health care resources contract for the educational costs of Graduate Medical Education (GME) or Graduate Dental Education (GDE) must be pro-rated based upon the total number of VA filled positions divided by the total number of resident positions in comparable GME or GDE programs at the affiliate, and each facility needs to decide on a case-by-case basis which cost category to include (VHA Handbook 1400.10 pp. 4-5). The Handbook also specifies categories of costs that may be reimbursed through these contracts. All categories specified are allowable costs that VA could pay for under 38 U.S.C. § 7406(c)(2)(D).

The Handbook expressly states that certain costs may not be reimbursed. These include (but are not limited to) administrative expenses relating to program support services and supplies, recruitment or orientation expenses, and faculty salaries or benefits.

Page 2.

OIG Draft Report, Review of Educational Cost Contracts Awarded Pursuant to VHA Handbook 1400.10

VHA facilities have a longstanding history of contributing to the educational costs of affiliates. VHA Handbook 1400.10 did not represent a policy change for the Department of Veterans Affairs. Rather, 1400.10 merely standardized the mechanisms for cost sharing, using the mechanism that was determined by OGC to be the most appropriate.

Recommendation 2. We recommended the Interim Under Secretary for Health terminate existing contracts for indirect educational costs awarded under the guidance of VHA Handbook 1400.10.

VHA Comments: Non-concur. VHA will not terminate existing contracts executed under VHA Handbook 1400.10, as the policy is still in effect.

Veterans Health Administration
April 2015

Issue Paper

OIG Draft Report, Review of Educational Cost Contracts Awarded Pursuant to VHA Handbook 1400.10 Educational Cost of Physician and Dentist Resident Training Pursuant to Title 38 United States Code § 8153

Background. Handbook 1400.10 details the procedures to contract for selective prorated payment of educational costs of physician and dentist resident training to affiliated sponsors of programs under which physician or dentist residents participate in providing healthcare services to VA beneficiaries. OIG reviewed nine contracts and two proposals. The purpose of the review was to determine the validity of the policy set forth in VHA Handbook 1400.10 and the legality of the awarded contracts. OIG concluded the agreements were not valid FAR based contracts, no authority existed for them and the Handbook is a substantial change in VA's historical policy to not fund the indirect and overhead costs of its affiliated Schools of Medicine. OIG recommended rescinding Handbook 1400.10 and terminating existing contracts. Each OIG conclusion and Office of General Counsel (OGC) response is summarized below.

OIG Conclusion: Educational cost contracts awarded pursuant to Handbook 1400.10 are not valid FAR contracts because the contracts do not identify products or services to be provided and the performance work statement (PWS) lists costs incurred by the affiliate rather than services provided to VA.

Response:

- It is the mission of VHA to participate in the education of health care professionals, who in turn, provide care to VA beneficiaries.
- The authority to conduct residency and student training programs is contained in Title 38 U.S.C. 7302.
- VHA policy requires that, with few exceptions (e.g., Chief Residents and Advanced Fellows), all such residents be enrolled in accredited training programs, which must maintain the highest standards of excellence.
- Affiliates perform a service to ensure that their training programs are properly accredited to VA's requirements.
- VHA pays residents' salaries and benefits through disbursement agreements authorized under 38 U.S.C. 7406(c) and pursuant to guidance in VHA Handbook 1400.05.
- Affiliates incur additional costs with maintaining a properly accredited residency training program that VA directly benefits from, for which there are no other competitive sources and which are not recoverable under the disbursement agreements authorized by 7406(c).
- These educational cost contracts cover these additional costs and are limited to VHA's *pro rata* share (the total number of VA filled positions divided by the total number of resident positions in comparable GME or GDE programs at the affiliate). Costs are further limited to select costs directly related to the benefit of receiving services from a resident trained in an accredited program (e.g. fees to accrediting bodies). The Handbook specifically excludes affiliate program costs such as recruitment or orientation expenses and faculty salaries or benefits.
- Paying pro-rated educational costs ensures compliance with VHA policy mandating that all training programs meet appropriate accreditation requirements and allows expansion of the VHA physician workforce in VHA facilities with affiliations with academic institutions to enable Veterans to receive the highest possible quality of care.

- 38 U.S.C § 8153 authorizes VA to acquire a health-care resource (commercial service, the use of medical equipment or space, or research) from an affiliate “without regard to any law or regulation (including any Executive order, circular, or other administrative policy) that would otherwise require the use of competitive procedures for acquiring the resource.”
- Providing and maintaining a resident training program is a commercial service, which VA is obtaining from the affiliates under 38 U.S.C. § 8153.

OIG Conclusion: 38 U.S.C. § 8153 does not contain any provisions allowing VA to share in an affiliate’s indirect educational costs or purchase services of residents or trainees.

Response:

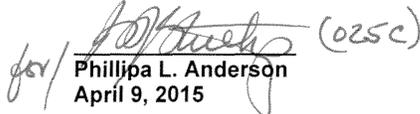
- The effect of the Handbook is a reasonable extension of the sole source authority contained in 38 U.S.C. § 8153(a)(3)(A) allowing VA to acquire a health-care resource (consisting of commercial services) from an affiliated institution “without regard to any law or regulation ... that would otherwise require the use of competitive procedures.”
- 38 U.S.C § 8152 defines the term “health-care resource” to include “any health-care support or administrative resource.”
- VA is not obtaining residents under § 8153 but instead under 38 U.S.C. 7406 and these persons are legally deemed employees of VA, covered by the FTCA.

OIG Conclusion: VHA Handbook 1400.10 is a substantial change in VA’s historical policy of not to fund the indirect and overhead costs of its affiliated Schools of Medicine and permits reimbursement of costs that are prohibited in Disbursement Agreements and sole source contracts with physicians under 38 U.S.C. § 8153.

Response:

- VHA has a long standing history of contributing to the educational costs of affiliates. Handbook 1400.10 merely standardized implementation for accredited program costs sharing through official VHA guidance developed in collaboration with OGC.
- Handbook 1400.10 identifies costs that are allowable and those that are not (such as administrative expenses relating to training program support services and supplies, recruitment or orientation expenses and faculty salaries or benefits).
- Reimbursable costs are limited to VHA’s *pro rata* share of allowable costs.
- 023 confirmed that all allowable cost categories specifically identified in the Handbook are allowable costs that VA could pay for under 38 U.S.C. 7406(c)(2)(D) (authority to hire and compensate residents provided under the training program). (Note that this does not include “(i) Other,” VHA Handbook 1400.10, ¶ 12(a)(6)(i), which requires separate justification and approval.)

Prepared by Phillipa Anderson, Barbara Stuetzer, Carrie Parish, Bridget E. Grant, Eric Raun, and Katherine C. Seto.

 (025C)
Phillipa L. Anderson
April 9, 2015

OIG Response to Management Comments

On April 13, 2015, the Department provided a response from the Interim Under Secretary for Health. The Interim Under Secretary for Health, on behalf of the Veterans Health Administration (VHA), non-concurred with our conclusions. Therefore, they did not agree to our recommendations nor provide any action plan. VHA stated that they had the full concurrence and approval of VA's Office of General Counsel (OGC) when VHA Handbook 1400.10 was adopted and that OGC still stands by their interpretation of 38 U.S.C. § 8153 contained in VHA Handbook 1400.10. We requested a copy of the OGC opinion from VHA. On April 17, 2015, VHA provided an Issue Paper prepared by OGC regarding educational cost contracts. The Issue Paper was dated April 9, 2015, and was written to specifically address the conclusions in our report. On May 19, 2015, we contacted OGC and provided them a written narrative of our concerns regarding the statements and positions outlined in OGC's Issue Paper. OGC requested until June 8, 2015 to review the write-up that we provided to them. OGC requested a meeting on June 9, 2015, to discuss our concerns. Because the issues were not resolved during the meeting on June 9, 2015, we sent a detailed email to OGC addressing certain issues that they raised during the meeting that had not been raised previously. We received no response and the issues remain unresolved. Our response to VHA's comments and issues are as follows.

1. Educational Cost Contracts Awarded Using VHA Handbook 1400.10 are not Valid FAR Contracts. VHA asserts that VHA Handbook 1400.10 is a reasonable extension of the sole source authority contained in 38 U.S.C. § 8153 to acquire a healthcare resource from an affiliated institution. However, VHA failed to demonstrate the commodity or service VHA is acquiring. As noted in the report, the standard Performance Work Statement (PWS) for Educational Cost contract demonstrates that VA is simply reimbursing an affiliated School of Medicine (SOM) costs related to Graduate Medical Education (GME) training and not procuring a healthcare resource as required by 38 U.S.C. § 8153. Even the title of VHA Handbook 1400.10, "Educational Costs of Physician and Dentist Resident Training" fails to identify a *healthcare resource* as defined in 38 U.S.C. § 8152. VHA and OGC state that that VA has authority to conduct residency and student training programs in 38 U.S.C. § 7302 and that the residents' stipends and benefits are paid through disbursement agreements authorized by 38 U.S.C. § 7406(c). The representation is not entirely accurate because Section 7302 is much broader in that it covers all health personnel, not just medical residents and students. Section 7302 (a) states "to the extent feasible without interfering with the medical care and treatment of veterans, shall develop and carry out a program of education and training of health personnel." Subsection (d) of Section 7302 further provides that the:

Secretary shall carry out subsection (a) in cooperation with the following institutions and organizations.

- (1) Schools of medicine, osteopathy, dentistry, nursing, pharmacy, optometry, podiatry, public health, or allied health professional.
- (2) Other institutions of higher learning.
- (3) Medical centers.
- (4) Academic health centers.
- (5) Hospitals.
- (6) Such other public or non-profit agencies, institutions, or organizations as the Secretary considers appropriate.

While residency and physician training programs are included in the list, the statutory provision is not limited to these programs. *More importantly*, the statute does not provide the Secretary with any authority to enter into contracts with any institution or organization to reimburse the program's sponsor for costs incurred. What VA provides under the statute is a forum at which the residents and students can obtain the clinical experience needed to complete the training.

It is important to note that the physician residency and student training programs in question are not VA owned or VA sponsored programs; rather, they are programs owned and sponsored by VA's affiliate. A review of the database maintained by the Accreditation Council for Graduate Medical Education (ACGME) shows the affiliate, not VA, is the sponsor of the program in each specialty. In many cases, VA is but one of multiple medical facilities that the medical residents and fellows rotate through to complete their training programs. We have no evidence that the other participating institutions providing a forum for the residency and intern training programs are also contributing a pro rata share of the costs incurred.

To rationalize its position, OGC states that affiliates are incurring costs in running the Graduate Medical Education (GME) residency training programs that VHA participates in and because these costs are not recoverable under 38 U.S.C. § 7406(c), the education cost contracts established by Handbook 1400.10 are intended to provide a means to reimburse an affiliated SOM costs not authorized under 38 U.S.C. § 7406(c). As previously stated, Section 7302 did not give the Secretary the authority to enter into contracts or other agreements with institutions or organizations in order to carry out a program of education and training of healthcare personnel. Accordingly, additional legislation was required to reimburse an affiliated SOM for any costs associated with the healthcare training. Section 7406(c) authorizes the Secretary to contract with one or more hospitals, medical schools, or medical installations having hospital facilities and participating with VA in the training of interns or residents. The statute limited payment to the amount covering the cost for the period such intern or resident serves in a VA facility furnishing hospital care or medical services. The statute further limits such payment to stipends fixed by the Secretary pursuant to paragraph (1), fringe benefits such

as health insurance, and tax on employers pursuant to chapter 21 of the Internal Revenue Code of 1986, and an amount to cover a pro rata share of the cost of the entity to administer the stipends and fringe benefits for the residents. OGC admits that § 7406(c) does not authorize the Secretary to “purchase” or subsidize an affiliated SOM’s GME indirect program or “educational” costs. Unlike §§ 7302 and 7406(c), neither §§ 8152 nor 8153 include any language relating to residency training programs nor do they explicitly or implicitly authorize the Secretary to reimburse an affiliated SOM’s costs not authorized for reimbursement under to subsidize these programs. Absent specific statutory language in §§ 8152 or 8153, reimbursement to an affiliated SOM for costs incurred for residency training programs is limited to the costs identified in § 7406(c).

OGC failed to adequately address our conclusion that VA is not procuring a commodity or service under these contracts as required under the FAR. OGC incorrectly asserts VA is obtaining or procuring the resident training programs from an affiliated SOM and that these training programs are commercial services that can be procured under 38 U.S.C. § 8153. During the meeting on June 9, 2015, OGC stated that VHA was procuring accreditation. OGC’s statements are incorrect for several reasons. Medical residency and intern programs are not a commercial service. They are required as part of the medical education program and can only be provided at the sponsor’s facility or participating facility approved by ACGME. VHA is not procuring services to support a VA GME program but rather is a participant in the affiliated SOM’s GME programs. The affiliated SOM remains the program owner and is the responsible party for the GME programs. The SOM’s program is accredited, not VA.

OGC further states that VHA mandates appropriate accreditation requirements for GME; however, this is statement is incorrect as VHA does not accredit nor does an affiliated SOM maintain accredited GME training programs at the demand and or need of VHA. As discussed above, an affiliated SOM’s residency and intern programs are accredited by ACGME. Even a cursory review of the PWS for each of the contracts we reviewed shows that VHA is not procuring GME programs or any services related to those programs. The PWS is simply a list of indirect costs that VHA agrees pay to an affiliated SOM to cover costs not authorized under Section 7406(c).

For the reasons discussed above, we stand by our conclusion that the educational cost contracts established in VHA Handbook 1400.10 are not FAR based contracts. OGC’s opinion allows VA to unlawfully circumvent the restrictions placed by § 7406(c) on reimbursement to an affiliated SOM for residency and intern training for services performed at VA. If VA believes that VA should pay such expenses, it should seek a legislative change to § 7406.

2. No authority exists for Educational Cost Contracts. OGC asserted in its Issue Paper that 38 U.S.C. § 8153 provides the authority for Educational Cost Contracts because Education Cost Contracts are both a commercial service and a healthcare

resource. As already established, the PWS does not identify any service that is being procured; therefore, Educational Cost Contracts cannot be a commercial service. OGC appeals to the definition of healthcare resources in 38 U.S.C. § 8152 which states that “any healthcare support or administrative resource” is included in the definition of a healthcare resource. OGC did not elaborate or provide any rationale that the definition of “healthcare support or administrative resource” includes subsidizing an affiliated SOM’s GME indirect program costs. OGC appears to ignore the full definition of a health-care resource as set forth in Section 8152, which is “includes hospital care and medical services (as defined in Section 1701). The straightforward interpretation of “healthcare support or administrative resource” would be those costs related to the direct healthcare terms contained in 38 U.S.C. § 1701, 38 U.S.C. § 1782, and 38 U.S.C. § 1783. None of these sections include any explicit or implicit reference to educational costs or GME program costs as being included in the definition of a healthcare resource. Therefore, since *direct* educational costs are *not* included in the definition of healthcare resources, one can only conclude that any *indirect* costs related to those direct costs *cannot* conceivably be interpreted to be included in the definition of healthcare resources. OGC provided no support that educational costs as described in VHA Handbook 1400.10 could be interpreted as a “healthcare support or administrative resource” contained in 38 U.S.C. § 8152.

OGC has selectively quoted portions of the provisions of § 8153 to justify its position. The very first statement in the statute is, “To secure health-care resources which otherwise not be feasibly available.” Costs incurred by an affiliated SOM to train its residents and interns does not meet either definition in that VA is not purchasing services that are not otherwise feasibly available.

Our position is further supported by the provisions in VA Directive 1663, which further defines Healthcare Resources and Healthcare Resources Contracts in Section 6 as follows:

a. Health Care Resources. The term “health care resources” involves the provision of a broad range of health and medical services, including medical specialties, such as: radiology, cardiovascular surgery, etc. Health care resources also refer to health care support and administrative resources, the use of medical equipment, space, and home oxygen. Health care support and administrative resources include those services, apart from direct patient care, determined necessary for the operation of VA facilities. Health care support resources serve medically-related purposes (e.g., biomedical equipment repair, patient transport, etc.). Administrative resources include services not unique to the provision of medical

care, but deemed necessary to support the operation of a medical center (e.g., transcription services, grounds maintenance).

b. Health Care Resources Contracts. VHA may enter into Health Care Resources contracts for the acquisition of health care resources, including hospital and ambulatory care, mental health services, medical and surgical services, examinations, treatment, rehabilitative services and appliances, preventive health care, home care, hospice, blood products, and other health care services.

The definitions contained in VA Directive 1663 do not explicitly or implicitly contain any references to procuring GME programs or any costs related to GME programs. Since we began conducting the pre-award reviews for sole-source healthcare resource contracts in 1999, there has always been a clear understanding that healthcare resources was for practicing clinicians and not interns or trainees as reflected in the definitions used in VA Directive 1663 that was adopted as policy in 2006.

For the reasons stated above, we stand by our conclusion that no statutory authority exists for Educational Cost Contracts.

3. VHA Handbook is inconsistent with long-standing policy. OGC stated that VHA has a long standing history of contributing to the education cost of affiliates and that VHA Handbook 1400.10 merely standardizes the payment of these costs. However, OGC does not provide any support for this statement. The OIG has not identified any instances prior to VHA Handbook 1400.10 where VHA has made specific payments to an affiliated SOM for indirect costs such as accreditation fees and software fees as described in the standard PWS. OGC further states that the costs described in VHA Handbook 1400.10 are allowable under 38 U.S.C. § 7406(c) (which VHA also stated twice in their non-concurrence) which contradicts OGC's earlier statement in their Issue Paper that these costs were *not* recoverable under 38 U.S.C. § 7406(c). 38 U.S.C. § 7406(c) costs are limited to the cost of the central administrative agency incurs to make the stipend payments, pay and distribute fringe benefits, and maintain all records related to payroll deductions and other personnel records such as leave. This interpretation also contradicts VHA Handbook 1400.05 which implements 38 U.S.C. § 7406(c). VHA Handbook 1400.05 explicitly states that the costs that are listed in VHA Handbook 1400.10 are *not* reimbursable under Section 7406(c). Title 38 U.S.C. § 7406(c) cannot be interpreted to include costs related to the administration of the actual accredited GME training program being run by an affiliated SOM. Incidentally, if Section 7406(c) did authorize the payment of educational costs, there would be no need to enter into contracts under § 8153 to pay these costs as those costs would simply be authorized under the Disbursement Agreements.

Appendix E

In summary, OGC erroneously implies and even explicitly states in its Issue Paper that VHA is *obtaining* GME training programs from an affiliated SOM. As discussed above, VA is not procuring the GME programs but is merely a participant in the SOM's accredited programs. The affiliated SOM remains the owner and responsible party of its accredited GME programs and residency training is not a commercial service. One cannot issue a solicitation or other procurement request and simply buy such services open market. Programs are accredited by ACGME well in advance and there cannot be changes without approval. In addition, the PWS for these contracts show that VA is not purchasing a commodity or service as required by the FAR. Accordingly, the use of § 8153 to reimburse the SOMs for costs is inconsistent with the FAR. Furthermore, § 8153 does not explicitly or implicitly authorize contracts for residents and other individuals in training programs. VA's only authority to reimburse an affiliated SOM for costs is limited to the costs delineated in § 7406(c).

It is also important to note that as a major participant in GME programs, VHA is incurring significant direct and indirect educational costs of its own. VHA does not seek to have those costs "shared" with an affiliated SOM. Currently it is estimated that VHA is burdened with indirect costs of over \$900 million¹ related to its participation in GME training programs. This is in addition to the over \$900 million in direct payments by VHA for the cost of the residents stipends and fringe benefits. Together, these costs are over \$1.8 billion per year. This does not include the sole-source and competitively awarded contracts to VA's affiliated SOMs for healthcare resources awarded under § 8153. Currently, VA's Electronic Contract Management System is showing over \$55 million² in sole-source contract awards to affiliated SOMs for healthcare services. OGC has not supported its assertion that VHA has statutory authority for VHA to make payments to an affiliated SOM to subsidize the SOM's indirect costs of GME programs that VHA participates in.

OGC stated at the meeting on June 9, 2015, that the education costs were considered by OGC to be allowable because they were also paid by Medicare. We subsequently advised OGC that Medicare has promulgated regulations to implement specific statutory authority (Social Security Act Section 1886(d)(5)(B)), allowing Medicare to reimburse hospitals for direct and indirect medical education costs relating to the care of Medicare patients. These regulations were updated in the last few years to incorporate changes under the Affordable Care Act. With regard to indirect medical education costs, the regulations provide that "prospective payment *hospitals* that have residents in an approved graduate medical education (GME) program receive an additional payment for

¹ FY 2015 VA Budget estimate for education costs per the VERA model is \$901 million. VHA's Office of Academic Affiliations made statements that it believes the VERA funds are intended to cover or pay for the SOMs indirect educational costs. However, VA's budget and VERA documents are clear that this figure represents the amount of indirect costs VHA is incurring and is burdened with by participating in GME training.

² Some of these funds are multi-year and do not represent annual cost and do not include competitive awards to affiliated SOMs or interim contracts.

Appendix E

a *Medicare discharge* to reflect the higher patient care costs of *teaching hospitals* relative to non-teaching hospitals.” (*Emphasis added*). It is clear that the payments are to the teaching hospital, not the SOM and are related directly to costs incurred by the hospital for treating Medicare patients. We also pointed out at the meeting that these are the same indirect costs that VA incurs as a teaching hospital and are included in the VERA budget allocation for FY2015 in the amount of \$900 million. Paying indirect education costs to a non-VA entity for care provided to non-veterans would effectively result in VA paying costs twice. In addition to being inconsistent with the payments that Medicare is allowed to pay under Section 1886(d)(5)(B), such payments would not only be duplicative but clearly outside the scope of authority granted in Section 7406(c) to pay direct costs.

OIG Contact and Staff Acknowledgements

OIG Contact	Maureen Regan
Acknowledgments	Myong Brown Scott Coker Mark Myers

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