MEMORANDUM OF UNDERSTANDING
BETWEEN THE VETERANS HEALTH ADMINISTRATION AND THE DEPARTMENT OF DEFENSE MILITARY HEALTH SYSTEM
HEALTH CARE RESOURCES SHARING GUIDELINES
Agreement Number DHA-2019-S-1214

This Memorandum of Understanding (MOU) rescind and replace the Supplement to the Department of Veterans Affairs (VA) and the Department of Defense (DoD) Health Care Resources Sharing Guidelines, dated December 5, 2016. VA and DoD are collectively referred to in the MOU as "Partners".

I. PURPOSE

The Under Secretary for Health, VA, and the DoD Assistant Secretary of Defense (Health Affairs) (ASD(HA)), are issuing these Health Care Resource Guidelines (MOU Guidelines) for the mutually beneficial and standardized coordination and delivery of interagency health care resource sharing between VA and DoD. These MOU Guidelines are designed to streamline and standardize the development requirements and approval of all Veterans Health Administration (VHA) and Military Health System (MHS) health care resource sharing agreements, with the goal to improve the access, quality, and cost effectiveness of health care provided by VHA and the MHS to beneficiaries of both Departments.

II. AUTHORITY

These MOU Guidelines are authorized by Title 38, United States Code, section 8111 (38 U.S.C. § 8111), entitled "Sharing of Department of Veterans Affairs and Department of Defense Health Care Resources," Title 10, United States Code, section 1104 (10 U.S.C. § 1104), entitled "Sharing of Resources with the Department of Veteran's Affairs." These MOU Guidelines assist in the coordination and sharing of health care resources between the Departments.

III. SCOPE

A. In Scope Provisions. These MOU Guidelines provide guidance for the clinical care and other services authorized by VHA and MHS under the 38 U.S.C. § 8111. Subject to the exclusions in paragraph B, the authorized services include (but are not limited to): Inpatient; Outpatient; Ancillary Services; Pharmacy; Administrative Services; Existing Space and Human Capital Resources; and Dental, (see HA Policy 07-011: Space Available Dental Care, dated July 25, 2007).

VA-DoD sharing agreements will be developed using the electronic version of VA Form 10-1245c, entitled "VA/Department of Defense Sharing Agreement," and the Local Operating Procedure (LOP) located at https://rsa.max.gov. When the Sharing Parties electronically sign VA Form 10-1245c, the VA/DoD sharing agreement will be considered in effect as of the date of last signature for up to five (5) years. The VA Form 10-1245c serves as the primary form required for the execution of VA/DoD sharing agreements. A proposed agreement must include this form, signed by both

parties and submitted to the approving authorities in each Department. Normally, agreements will go into effect 46 days after receipt by the approving authorities provided no disapproval has been transmitted in writing to one or both parties signing the agreement.

The electronic version of VA Form 10-1245c is designed to govern and address specific requirements of clinical and non-clinical VA/DoD sharing agreements; however, a Memorandum of Agreement or MOU may be used to further delineate non-clinical details of the agreement and attached to the VA/DoD sharing agreement form.

B. Out of Scope Provisions

1. Care provided by DoD facilities in foreign countries[1] is not addressed in this document and should not be accounted for in executing VA/DoD sharing agreements using VA Form 10-1245c. DoD and VA are to follow the Foreign Medical Program guidance and 38 U.S.C. § 1724.

2. Integrated Disability Evaluation System, Polytrauma referred care (from DoD to VA), and other programs that may be directed separately are not addressed in this MOU Guidelines and should not be accounted for in executing VA/DoD sharing agreements using VA Form 10-1245c.

3. Reimbursement for shared Administrative Services, Existing Space and Human Capital Resources captured in VA Form 10-1245c will not utilize the standard reimbursement rate for health care services (TRICARE rate minus 20 percent) identified in Section IV, paragraph I of these MOU Guidelines. All non-clinical resource sharing will need to be addressed appropriately and on a separate VA Form 10-1245c. Local policies and regulations must be followed with regards to leasing space on DoD installations and/or Medical Treatment Facilities (MTFs).

4. TRICARE for Life beneficiaries shall not be referred to VA for care under these MOU Guidelines.

5. The James A. Lovell Federal Health Care Center (JALFHCC) is not covered by these MOU Guidelines.

6. Direct referral care from VA to DoD under the VHA Community Care Network is not covered by these MOU Guidelines

7. Any referred care provided outside a federal health care facility utilizing different authority or VA/DoD sharing agreements/contract vehicles (e.g., External Resource Sharing Agreements with civilian facilities) is not covered by these MOU Guidelines. All care covered by this MOU must be provided in the federal health system.

IV. VA/DoD SHARING AGREEMENT REQUIREMENTS

[1] Guam and Puerto Rico are U.S. territories and are included in this agreement.

A. Eligibility, Authorization and Referral Process

1. Eligibility and Authorization of Care

    a. Determination of Eligibility. VA/DoD Sharing Partners will be solely responsible for determining eligibility of their beneficiaries. It is the responsibility of the referring Department to provide authorization for care prior to the patient receiving care at the receiving facility.

    b. Unauthorized Care. For emergency care or additional care provided that has not been preauthorized, resource sharing referring Parties will refer to their hospital notification procedures.

    c. Dual-Eligible Beneficiaries. Dual-eligible beneficiaries are those individuals that are eligible to obtain health care services at either a VA or DoD health care facility. In either case, the individual must have authorization from the referring facility when presenting for health care services at a VA or DoD facility. The agency providing the care will bill the agency referring the care.

2. Referral/Consult Management

    a. VA and DoD facilities shall follow their Department policies, processes/ procedures, programs, and systems.

    b. Outpatient referrals are limited to the specific episode(s) of care for which they are written. They must include the number of visits and the timeframe for the visit(s). Care may not be provided that exceeds the specific episode of care contained in the referral.

    c. Care that is not approved in a referral will be considered unauthorized. The treating facility must first obtain approval to provide any additional care outside the scope of the original referred episode of care. Unauthorized care may not be billed to the partnering agency. Resource sharing referring Parties will refer to their hospital notification procedures to request authorization.

3. DoD/VA Care Coordination: VA and DoD facilities shall follow their Department policies, processes/procedures, programs and systems.

4. Appointment Scheduling and Care Provision: For appointment scheduling, patients fall under the access to care standards of the Department referring the care. If the receiving facility cannot meet the access to care standards of the referring facility, the referring facility will follow their Departments referral policies to meet the access to care standard.

5. Medical Documentation: VA and DoD facilities shall follow their Department's policies, processes/procedures, programs and systems. VA/DoD Sharing Partners will ensure access to medical documentation is provided for continuity of care, leveraging the Joint Legacy Viewer (JLV) or future information technology (IT) systems whenever possible.

B. Clinical Services

1. Inpatient Services: Inpatient services include all hospital services and all necessary ancillary support services provided to a beneficiary from the time of admission until the time of discharge. No referral will be required for additional inpatient services in support of the beneficiary's primary episode of care, as determined by the attending treating provider while the beneficiary remains under his/her care. Where determined to be necessary and appropriate by the treating provider care plan, follow-up outpatient visits will be authorized for patient's post-discharge at the treating MTF or VA Sharing Partner (VASP) if the discharge summary calls for post-care visits to evaluate progress. These visits should be in keeping with national standards for follow up care and will be considered covered by the original authorization and coordinated with the referring Departments' referral coordinator.

2. Outpatient/Specialty Services: Referrals must clearly indicate whether it covers only evaluation or both evaluation and treatment. This visit/encounter will, in most instances, occur in a provider's office/exam setting and will encompass, as a minimum, an assessment, diagnosis/evaluation and treatment plan.

3. All ancillary support considered commensurate with this visit by the treating provider (e.g., blood draws, x-rays, MRI) will be included as part of the referral.

4. Emergency Services: Both Departments will ensure (consistent with the policy of the Federal Emergency Medical Treatment and Active Labor Act) including requirements that every patient who comes to an emergency room must be offered a medical screening exam to determine if a true emergency condition exists. VA and DoD facilities shall follow their Department policies and procedures regarding access to care.

5. Discharge Management: Facilities will follow their Department guidelines to assist with transitioning patients back into their respective systems. Department care coordinators must work together to ensure the patient has an actionable plan upon discharge. VASP and MTF staff must work together to facilitate coordination of discharge planning and post follow-up care per local policy, to include Durable Medical Equipment (DME), oxygen therapy, follow-up VA appointments, medications, pharmacy, lab work, etc. In coordination with the treating facility, the referring facility has the responsibility to execute an actionable plan upon discharge of the patient.

6. Ancillary/Pharmaceuticals/Special Services: VA and DoD ancillary, pharmaceuticals and/or special services (e.g., DME) must follow local policies and procedures to leverage and align with governing VA and DoD policies, processes/procedures, programs and systems.

C. Health Information Management Exchange

1. Health Information Interoperability: JLV provides an integrated, read-only display of health care data in a common viewer. Through the JLV, DoD and VA health care providers and administrators can share and have timely access to consults and patients' medical records.

   By using JLV or future IT systems to view Consults and Treatment Notes between a VASP and MTF, medical documentation can be quickly shared between the providers. This process can assist with care coordination by providing consult information to help effectively assign the appropriate specialty provider, documenting what occurred during treatment and allowing for efficient filing of the treatment notes in a medical record. JLV or future IT systems will be leveraged, where possible, in order to expedite sharing/exchange of consult information and patient medical information.

2. Data Sharing, Privacy, Confidentiality, and Security: Information will be exchanged to the greatest extent permitted by VA and DoD information systems. The facilities will comply with all applicable privacy and confidentiality statutes, regulations, and guidance, including but not limited to the Privacy Act, 5 U.S.C. § 552a; 38 U.S.C. §§ 5701, 5705, and 7332; the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. Parts 160 and 164; Executive Orders; National Security Directives; and Office of Management and Budget Circulars. Information protected by statute or regulations will be disclosed only if specifically authorized under all applicable legal authorities. The facilities will comply with all applicable provisions of the Federal Information Security Modernization Act of 2014, P.L. 113-283, 128 Stat. 3084 44 U.S.C. §§ 3551-59; 38 U.S.C. §§ 5721-5728; the HIPAA Security and Breach Notification Rules, 45 C.F.R. Parts 160, 162 and 164; Executive Orders; National Security Directives; Office of Management and Budget Circulars; and other information security and privacy standards and requirements as established by the National Institute of Standards and Technology, DoD, and VHA.

3. Viewing Medical Records: Each organization will maintain inpatient and outpatient medical records for all patients seen. JLV or future IT systems will be utilized, when possible, to facilitate sharing of consult information and medical documentation between the VASP and MTF.

   a. Inpatient Care. Copies of completed and coded discharge summaries and operation reports will at a minimum be hand delivered or securely transmitted

electronically to the designated Point of Contact (POC) or preferably electronically pulled from the JLV or future IT systems that will be used.

b. Outpatient Care. Copies of the outpatient documents will be appropriately identified and at a minimum hand delivered or securely transmitted electronically to the designated POC or preferably electronically pulled from the JLV or future IT systems that will be used.

D. Sharing of Administrative Services, Existing Space and Human Capital Resources for Health Care: VA and DoD should follow their respective Department policies, processes/procedures, programs and systems as they pertain to administrative services, existing space, and human capital resources. It is the responsibility of DoD and VA resource sharing leadership to effectively manage the sharing of administrative services, existing space, and human capital resources. Details of these sharing activities will be specified and documented within the VA/DoD sharing agreement, VA Form 10-1245c, to include capturing shared space in VA's Capital Asset Inventory tool managed by VA Office of Asset Enterprise Management, or shared space in MTFs under DoD's Real Property Inventory as appropriate.

E. Readiness/Contingency: No agreements or commitments between DoD and VA shall compromise the readiness and mobility/contingency availability of DoD organizational personnel. All Parties will fulfill all their respective responsibilities and cooperate to the greatest degree allowed with respect to peacetime planning or national emergency response. Either Party may develop, modify, suspend, or terminate all or part of this agreement in case of mission requirement/response to national emergencies in accordance with [38 U.S.C. § 8111].

F. Quality Review and Performance

1. Credentialing and Privileging Process: Each Department will be responsible for credentialing and privileging providers and support staff delivering care in their respective facilities. In instances where one Party's provider cares for patients at the other Party's facility, credentialing will be required by the host Party. Providers must accept all host Party's credentialing review and approval processes and comply with the host Party's medical staff by-laws.

2. Utilization Review and Quality Management: Each Department will comply with the utilization review, peer review and quality assurance programs established by their respective organization for all provided care, regardless of the individual VA or DoD patient's eligibility. This includes, but is not limited to, inclusion and visibility of shared clinical services, submission of information concerning providers and compliance with pre-certification requirements, concurrent reviews, retrospective reviews, on-site quality reviews, discharge planning for inpatient admissions and prior authorizations for referrals.

Each Department's Utilization Management Department or appropriate Quality Management staff will partner together to collaboratively provide concurrent utilization review and quality assurance program evaluations to ensure the necessity, appropriateness and quality of health care provided. The organizations must be cognizant that quality assurance data cannot be shared with a joint VA/DoD group, board, or committee unless a VA/DoD sharing agreement exists that allows sharing of such data. Any VA/DoD sharing agreement should include a non-disclosure agreement statement to ensure staff members understand what patient information may or may not be shared.

G. Liability: While performing services pursuant to agreements associated to these MOU Guidelines, the MTF/VASP member remains an officer or employee of the United States performing duties within the course and scope of their federal employment/duties, or individual with a comparable status. Consequently, the provisions of the Federal Tort Claims Act (28 U.S.C. §§ 1346(b) and 2671-2680), including its defenses and immunities, will apply to allegations of negligence or wrongful acts or omissions by the individual while acting within the course and scope of their duties pursuant to this agreement.

In the event a claim or lawsuit is filed alleging negligence or acts of omission by the individual(s) while acting under the provisions of this agreement, the Department that controls the facility where the incident occurred shall be responsible for processing the claim and/or suit. In instances wherein a claim/suit alleges negligence on the part of both Parties, both Departments agree to cooperate in any investigation, providing appropriate documentation for the defense to contest any claim for damages. However, the employing Department shall remain responsible for purposes of Quality Assurance review and potential reporting of the provider(s) to appropriate national/state agencies for any settlement/judgment. For purposes of privileging/adverse clinical actions, the service that controls the facility and its privileging process shall be responsible for adverse clinical actions taken as well as appropriate reporting of those actions.

H. Dispute Resolution: The Parties agree, to the extent possible, to resolve all disputes under this document at the lowest level practicable. All disputes shall be submitted in writing to the other Party.

If no resolution can be reached, the Parties shall escalate the dispute within their respective organizations, as needed.

Final disposition of the dispute lies within the authority of the signatories, or their designees, to these MOU Guidelines.

I. Financial Agreement: The standardized DoD/VA health care resource sharing rate for health care services rendered is the TRICARE Reimbursement Rate (TRR) less a 20 percent deduction. Billing guidelines reflected in the *Defense Health Agency Uniform Business Office User Guide*, VA-DoD Resource Sharing Billing section,

remain in effect (the pharmacy rate file less 20 percent will be used). The only exceptions are facilities participating in Reimbursement Pilot studies (e.g., Advance Payment), or granted an approved waiver (see paragraph I. 4.).

1. Reimbursement and Rate Setting Methodology: All DoD/VA clinical resource sharing agreements will use the standard VA billing rate of TRR less 20 percent.

2. DoD to VA "Directed" Referred Care: All directed care will follow current TRICARE policies, processes/procedures, the TRICARE Operations Manual and VHA Directive 1660.06 for VA-TRICARE Network Agreements. TRICARE facilitates the billing and payment process to VA facilities for the treatment of DoD beneficiaries. All responsibilities, eligibility, registration, billing, and reimbursement, and TRICARE Health Plan information is detailed therein.

3. VA to DoD Referred Care: Prior to submitting medical bills or claims to VA for VA to DoD referred care, DoD facilities will first verify that (a) health care rendered to VA patients has a corresponding VA referral; (b) the care provided is within the scope of the VA referral; and (c) substantiating documentation is properly recorded and retained. Medical bills that do not meet all of these criteria shall not be submitted to VA for payment.

4. Waiver: Where use of the standard TRR less 20 percent would be fiscally insufficient to cover marginal costs for providing health care to Veterans, facilities may request a waiver to exempt them from applying the set standard TRR less 20 percent. The determination on approval/disapproval of waiver requests will be made by the VA/DoD Health Executive Committee Financial Operations & Business Operations Business Line (HEC FOBO) co-leads.

5. Reimbursement Methodology: DoD and VA are collaborating on a Reimbursement Methodology that is expected to set the groundwork for future payment for all referred health care under VA/DoD sharing agreements. Upon the mutual determination that the methodology is fiscally sound and executable, it will be evaluated by the HEC for national implementation.

6. Annual Audit Reviews: reviews will be conducted annually based on audit findings and agreed upon payment methodologies. To support a national standard reimbursement structure, statistically relevant Post Payment audits will be conducted to validate proper payments and support internal controls. Neither Department will be responsible for any improper payment as outlined in Improper Payments Elimination and Recovery Act (IPERA) and will be reimbursed for such payment(s). Post payment audits will be conducted and may be performed by a Third Party contractor to ensure that reimbursement estimates are appropriate. The Sharing Partners will respond in a timely manner to all communications and requests in support of financial statement audits or financial examinations. The VA/DoD Sharing Partners will designate a POC for audit requests and communications with the Departments and/or its associated Components.

7. Joint Executive Summary: The Departments will provide a Joint Executive Summary to the HEC/Joint Executive Committee (JEC) via the HEC FOBO that addresses workload capture, finance, and metrics results.

8. General Provisions:

    a. The VA/DoD Sharing Partners agree to use the Department of the Treasury's Interagency Payment and Collection (IPAC) system for interagency billing.

    b. The VA/DoD Sharing Partners agree that the agency performing the work or providing the services shall bill the receiving agency within 30 calendar days after the month in which performance occurred. Reimbursement for medical claims shall be paid by the receiving agency upon presentation of a clean claim (a "clean claim" is defined as a claim with no defect, impropriety, or special circumstance warranting a delay in payment, including incomplete documentation). The receiving agency shall remit payment no more than 30 days from receipt of a clean claim.

    c. The VA/DoD Sharing Partners agree that support will be provided on a reimbursable basis unless otherwise specifically stated in a corresponding MOA, MOU, or VA Form 10-1245c.

    d. The VA/DoD Sharing Partners agree to follow their Departments respective policies pertaining to obligating and de-obligating funds, based on current rates at time of obligations, and will ensure their respective internal control systems are adequate; information is reliable and valid; applicable laws, regulations, and policies are followed; resources are safeguarded and managed economically and efficiently; and operations are effective and efficient.

    e. The VA/DoD Sharing Partners agree that the VA/DoD sharing agreement is subject to the availability of funds. It is a violation of the Anti-deficiency Act (31 USC 1341(a)) to involve the Federal Government in an obligation for payment of money before an appropriation is made, unless authorized by law.

As additional and relevant Department financial policies are developed, modified and approved, updated language will be included in appropriate policies, handbooks, directives, manuals, or instructions.

J. New, Renewals, Modifications, Amendments, Termination of VA/DoD Sharing Agreements

1. Establishing New Agreements: Either Department may initiate a new VA/DoD sharing agreement at any time utilizing the electronic VA Form 10-1245c. Once appropriate policies, handbooks, directives, manuals, or instructions are updated

and agreed to by the Departments, all other VA/DoD sharing agreements' billing and payment methodology within the scope of this document will be superseded by way of modification, amendment, or replacement of this MOU; no additional local negotiations are permitted for sharing of clinical health care resources specified. VA/DoD sharing agreements can be written for a period up to five (5) years before it expires. VA facilities should follow the guidance and processes identified in VHA Handbook 1660.04 VA–DoD Health Care Resources Sharing Agreements and VHA Directive 1660 Health Care Resources Sharing with the DoD. DoD facilities should follow the general guidance provided in DoD Instruction 6010.23, DoD and VA Health Care Resource Sharing Program, along with any current or future DHA or Service specific instructional guides. Once signed, VA Form 10-1245c will be electronically forwarded by the Veterans Integrated Services Network (VISN) to VHA's Medical Sharing Office (MSO). DoD MTFs/Regional Offices under the functional and operational control of the Services should forward the electronic VA Form 10-1245c to their Service's Surgeon General's (SG's) DoD/VA resource sharing POC as appropriate, for processing. Service SG's DoD/VA POCs should then forward all electronically approved agreements to the DoD/VA Program Office (DVPO) POC. DoD MTFs under the functional and operational control of the DHA should forward the electronically approved VA Form 10-1245c through their DHA Enhanced Multi-Service Market or Direct Reporting Large Market Organizations' DoD/VA resource sharing POC, to the DVPO POC. Small Market Office and stand-alone MTFs should electronically forward the approved VA Form 10-1245c through the DHA Market Development Office DoD/VA resource sharing POC, to the DVPO POC.

2. Renewal or Modifications/Amendments of VA/DoD Sharing Agreements: The VA Form 10-1245c VA/DoD Sharing Agreement may be updated at any time. Updated documents shall be submitted through each VA/DoD Sharing Partner's chain of command promptly in accordance with each Department's procedures established to govern such actions. The submission process will be the same as listed in paragraph J.1.

3. Reviews: The VA Form 10-1245c VA/DoD Sharing Agreement must be reviewed annually. Continuation of the agreement beyond the current fiscal year is contingent upon review by the VA/DoD Sharing Partners. The appropriate review and oversight offices within each MTF/VASP will initiate and coordinate joint reviews to ensure that the resources being provided are in accordance with the agreement. If the review results in no changes, the agreement remains in force as written. If changes are made, procedures will follow those specified in paragraphs J.1 or J.2, above.

4. Termination of Agreements: Upon approval of these MOU Guidelines, termination by either Party shall require written notification. Termination of any clinical or administrative services (if applicable) in the sharing agreement or any part therein, shall occur 90 days following the date of the written notification to

terminate, unless a date is provided which is greater than the 90-day date. Termination of any capital space shared pursuant to the agreement (if applicable) or any part therein, shall occur 365 days following the date of the written notification to terminate, unless a date is provided which is greater than the 365-day date.

V. EFFECTIVE DATE AND MODIFICATION OF MOU

A. Duration: These MOU Guidelines become effective on the date of the last signature and remains in effect for nine (9) years or until terminated by either Party upon 180 days written notice to the other Party. These MOU Guidelines can be amended by mutual agreement of both Parties.

B. Review Authority: These MOU Guidelines shall be reviewed every five (5) years to determine continued applicability or need for modification.

C. Departmental Policies: For VA: VHA Handbook 1660.04, VA-DoD Health Care Resource Sharing Agreements, and VHA Directive 1660, Health Care Resources Sharing with DoD. For DoD: DoD Instruction 6010.23, DoD and VA Health Care Resource Sharing Program.

//SIGNED// 4/8/2020	//SIGNED// 4/20/20
Richard Stone, M.D. Date	Thomas P. McCaffery Date
Executive in Charge	Assistant Secretary of Defense for
Veterans Health Administration	Health Affairs