

December 7, 2020

WAIVERS TO VHA NATIONAL POLICY

1. PURPOSE

This Veterans Health Administration (VHA) notice establishes an interim process for Department of Veterans Affairs (VA) medical facilities and Veterans Integrated Service Networks (VISNs) to request waivers from compliance with VHA national policy.

2. BACKGROUND

VHA Central Office (VHACO) regularly receives requests from the field to waive all or part of a VHA national policy to resolve the cause of noncompliance without triggering negative findings by external or internal oversight bodies. The Government Accountability Office (GAO) recommended VHA “establish a standard policy exemption waiver process and centrally track and monitor approved waivers.” **NOTE:** See GAO-17-748, *Veterans Health Care: Additional Actions Could Further Improve Policy Management*, available at: <https://www.gao.gov/assets/690/687305.pdf>. This linked document is outside VA control and may not conform to Section 508 of the *Rehabilitation Act of 1973*. In light of the ongoing need, this notice establishes an interim process until a permanent process is adopted in a national directive.

3. RESPONSIBILITIES

a. **VHA Upper Level Leadership.** **NOTE:** *VHA Upper Level Leadership is defined in paragraph 5.* VHA Upper Level Leadership is responsible for:

(1) Ensuring Policy Owners comply with this notice.

(2) Reviewing data provided by the Office of Regulations, Appeals, and Policy (RAP) in accordance with this notice.

b. **Senior Advisor, Office of Regulations, Appeals, and Policy.** The Senior Advisor, RAP, is responsible for:

(1) Publishing active waivers received from Policy Owners within 2 business days of receipt. **NOTE:** *Active waivers are maintained at: <https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/Waivers>. This is an internal VA website that is not available to the public. Rescinded waivers will be removed at the end of the month of expiration.*

(2) Reporting data received from Policy Owners on all active, denied, and rescinded waivers twice per year to VHA Upper Level Leadership.

c. **Policy Owner.** The Policy Owner is responsible for:

(1) Approving or denying a waiver request in writing to the requesting party within 14 calendar days after submission and, if approved:

(a) Sending, within 7 calendar days after approval, the active waiver to RAP at VHA10BRAPRegulationsAppealsandPolicy@va.gov and to any other Policy Owner of relevant subject matter.

(b) Adding a date or triggering event at which point the waiver will expire and be rescinded. **NOTE:** *If no date or event is listed, the waiver will automatically be rescinded when the waived VHA national policy is rescinded or recertified.*

(c) Notifying the requesting party at least 3 months before the waiver expires. **NOTE:** *If the requestor is the VA medical facility Director, the appropriate VISN Director must be notified.*

(2) Notifying the requesting party, RAP, and any other Policy Owner of relevant subject matter when a waiver is rescinded.

(3) Sending data every 3 months to RAP at VHA10BRAPRegulationsAppealsandPolicy@va.gov on all active waivers and all waivers that have been denied or rescinded in the previous 3 months for owned VHA national policies.

d. **Veterans Integrated Service Network Director.** The VISN Director is responsible for initiating requests for waivers to Policy Owners on behalf of the VISN or, by request, on behalf of a VA medical facility within their Network. **NOTE:** *A sample template for waiver requests can be found at: <https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/Waivers>. This is an internal VA website that is not available to the public.*

e. **VA Medical Facility Director.** The VA medical facility Director is responsible for initiating requests for waivers to Policy Owners or to the VISN Director. **NOTE:** *If requesting the waiver directly to Policy Owners, the VA medical facility Director must notify the appropriate VISN Director. A sample template for waiver requests can be found at: <https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/Waivers>. This is an internal VA website that is not available to the public.*

4. WAIVER PROCESS

a. **Waiver Process.** All VHA employees must follow VHA national policy. However, VHACO recognizes that issues may impede the ability of VA medical facilities or VISNs to implement requirements prescribed in VHA national policy. The waiver process is used for a VA medical facility or VISN to apply for a waiver from compliance with all or part of a VHA national policy and may be initiated before or after publication of the relevant VHA national policy. **NOTE:** *No waivers are allowed for policies that address federal regulations, legal requirements, or that are adopted to address a specific*

concern of VA's Office of the Inspector General, GAO, or similar federal government entity. The process entails:

(1) **Step 1.** The VA medical facility Director or VISN Director identifies an issue that prevents the VA medical facility or VISN from fully complying with a VHA national policy and submits a waiver request to the Policy Owner and notifies RAP at VHA10BRAPRegulationsAppealsandPolicy@va.gov. **NOTE:** *If initiated by the VA medical facility Director, the appropriate VISN Director must be notified. A sample template for waiver requests can be found at: <https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/Waivers>. This is an internal VA website that is not available to the public.*

(2) **Step 2.** Within 14 calendar days after submission, the Policy Owner must approve or deny the waiver in writing to the requesting party.

(a) If approved, the waiver is active. Within 7 calendar days after approval, the Policy Owner must send the active waiver to RAP at VHA10BRAPRegulationsAppealsandPolicy@va.gov and to any other owner of relevant subject matter in the policy. **NOTE:** *Active waivers are maintained at: <https://dvagov.sharepoint.com/sites/VACOVHACOS/10B4/Waivers>. This is an internal VA website that is not available to the public.*

(b) If the Policy Owner denies the waiver, the Policy Owner must provide the decision directly to the requesting party, the appropriate VISN Director (if requestor is VA medical facility Director), and RAP at VHA10BRAPRegulationsAppealsandPolicy@va.gov.

(3) **Step 3.** Twice per year, RAP reports all active, denied, and rescinded waivers to VHA Upper Level Leadership. VHA Upper Level Leadership will review all waivers and determine that a current VHA national policy needs to be changed in response to the waivers granted. For example, a high volume of waiver requests on a specific policy may be indicative of an issue with the policy.

(4) **Step 4.** A waiver expires at the date or triggering event stated on the waiver. **NOTE:** *If no date or event is listed, the waiver will automatically be rescinded when the waived VHA national policy is rescinded or recertified.*

(a) The Policy Owner must inform the requesting party at least 3 months before the waiver expires. **NOTE:** *If the requestor is the VA medical facility Director, the appropriate VISN Director must be notified.*

(b) The requesting party must inform the Policy Owner if the triggering event has been satisfied or if the VA medical facility or VISN is otherwise fully compliant with the previously waived policy.

b. **Barriers to Implementation.** Barriers to implementation that may be considered as the basis for a waiver request include but are not limited to:

(1) Space limitations within VA medical facilities.

(2) A relative lack of availability in certain regions of personnel who could be recruited to VA to provide the service which is the subject of the policy.

(3) Difficulties in meeting information technology needs.

(4) Time that may be required to develop contacts or other arrangements with local provider organizations.

5. DEFINITIONS

a. **Policy Owner.** The Policy Owner is the VHA entity, for example, a VHA program office or chartered field advisory committee, listed as the Policy Owner or responsible program office for the VHA national policy.

b. **VHA National Policy.** VHA national policy establishes standards, a mandatory and definite course of action for VHA, and assigns responsibilities for executing that course to identifiable individuals or groups within VHA. VHA national policy is issued under the authority of the Under Secretary of Health, or designee, and is either a directive or a notice. VHA national policy must not meet the definition of a “rule” under the Administrative Procedures Act (5 U.S.C. § 551 et seq.). ***NOTE: Only directives and notices are considered VHA national policy. Handbooks, manuals, and memoranda signed by the Under Secretary for Health that were certified before January 12, 2017 will continue to serve as national policy until rescinded.***

c. **VHA Upper Level Leadership.** VHA Upper Level Leadership means positions to whom the Under Secretary for Health delegates signature, oversight, and decisional authority for VHA national policy. This includes:

(1) Deputy Under Secretary for Health.

(2) VHA Chief of Staff.

(3) Assistant Under Secretaries for Health.

6. All inquiries concerning this action should be addressed to RAP at VHA10BRAPRegulationsAppealsandPolicy@va.gov.

7. This VHA notice will be archived as of December 31, 2021.

December 7, 2020

VHA NOTICE 2020-37

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

/s/ Jon Jensen
VHA Chief of Staff

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