

(e) Determining the strategies for identifying potential NHS pavement and bridge projects that maximize overall program benefits within the financial constraints; and

(f) Recommending programs and implementation schedules to manage the condition of NHS pavement and bridge assets within policy and budget constraints.

**§ 515.19 Organizational integration of asset management.**

(a) The purpose of this section is to describe how a State DOT may integrate asset management into its organizational mission, culture and capabilities at all levels. The activities described in paragraphs (b) through (d) of this section are not requirements.

(b) A State DOT should establish organizational strategic goals and include the goals in its organizational strategic implementation plans with an explanation as to how asset management will help it to achieve those goals.

(c) A State DOT should conduct a periodic self-assessment of the agency's capabilities to conduct asset management, as well as its current efforts in implementing an asset management plan. The self-assessment should consider, at a minimum, the adequacy of the State DOT's strategic goals and policies with respect to asset management, whether asset management is considered in the agency's planning and programming of resources, including development of the long-range statewide transportation plan and the STIP; whether the agency is implementing appropriate program delivery processes, such as consideration of alternative project delivery mechanisms, effective program management, and cost tracking and estimating; and whether the agency is implementing adequate data collection and analysis policies to support an effective asset management program.

(d) Based on the results of the self-assessment, the State DOT should conduct a gap analysis to determine which areas of its asset management process require improvement. In conducting a gap analysis, the State DOT should:

(1) Determine the level of organizational performance effort needed to achieve the objectives of asset management;

(2) Determine the performance gaps between the existing level of performance effort and the needed level of performance effort; and

(3) Develop strategies to close the identified organizational performance

gaps and define the period of time over which the gap is to be closed.

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Parts 17 and 84**

**RIN 2900-AS20**

**Telehealth Grant Program**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulation to implement a new authority to establish a telehealth grant program. This new authority requires VA to enter into agreements, and expand existing agreements, for the expansion of VA telehealth capabilities and provision of telehealth services by establishing telehealth access stations in rural, highly rural, or medically underserved areas, to the extent practicable. We also propose to amend the copayment regulation by exempting all telehealth services from the copayment requirement.

**DATES:** Comments must be received on or before January 13, 2025.

**ADDRESSES:** Comments may be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. VA will not post on [Regulations.gov](http://Regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this

proposed rule is available at [Regulations.gov](http://Regulations.gov), under RIN 2900-AS20.

**FOR FURTHER INFORMATION CONTACT:** Leonie Heyworth, MD, MPH, Deputy Director for Clinical Services, Telehealth Services, Office of Connected Care, 810 Vermont Ave. NW, Washington, DC 20420, 202-461-6525. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On October 17, 2020, the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (the Act), Public Law 116-171, was enacted into law. Section 701 of the Act, codified as a note to section 1701 of title 38, United States Code (U.S.C.), mandated that VA enter into agreements, and expand existing agreements, with organizations that represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants.

VA understands that veterans who live in rural and highly rural areas may not have reliable internet access. Also, veterans who live in medically underserved areas may not have accessible health care facilities within their communities. Thus, VA has developed a telehealth program as a modern, veteran-, beneficiary- and family-centered health care delivery model that leverages information and telecommunication technologies to connect patients with health care providers, irrespective of the State or location within a State where the health care professional or the patient is physically located at the time the health care is provided. The telehealth access points use a secure video application to bridge the digital divide by providing veterans health care service via telehealth in a fixed, secure environment with a reliable internet connection. These telehealth access points allow veterans to receive telehealth services closer to their residence without the inconvenience of having long travel times to their nearest VA medical facility to receive health care, particularly when veterans may lack appropriate internet access in their home. The convenience of the telehealth access point also allows veterans to be more engaged in their health care, which results in a more positive health outcome.

Section 701(b)(1) of the Act requires VA to award grants to entities in carrying out agreements entered into or expanded under this section with eligible entities. Section 701(b)(2) of the

Act provides that, to the extent practicable, the Secretary shall ensure that grants are awarded to entities that serve veterans in rural and highly rural areas (as determined through the use of the Rural-Urban Commuting Areas coding system of the Department of Agriculture) or areas determined to be medically underserved. Section 701(b)(3) of the Act states that grants awarded to an entity pursuant to section 701(b) may be used for one or more of the following: purchasing, replacing, or upgrading hardware or software necessary for the provision of secure and private telehealth services; upgrading security protocols for consistency with VA security requirement; training of site attendants, including payment of those attendants for completing that training, with respect to military and veteran cultural competence (if the entity is not an organization that represents veterans), equipment required to provide telehealth services, privacy (including the Health Insurance Portability and Accountability Act of 1996, HIPAA, privacy rule as it relates to health care for veterans), scheduling for telehealth services for veterans, or any other unique training needs for the provision of telehealth services to veterans; upgrading existing infrastructure owned or leased by the entity to make rooms more conducive to telehealth (including soundproofing of an existing room, new electrical, telephone, or internet outlets in an existing room, aesthetic enhancements to make a more suitable therapeutic environment, and additions or modifications to windows or walls in an existing room, or other alterations needed to create a new, private room, including permits or inspections associated with space modifications); upgrading existing infrastructure to comply with the Americans with Disabilities Act (the ADA, 42 U.S.C. 12101 *et seq.*); upgrading internet infrastructure and sustainment of internet services, and the sustainment of telephone services.

The grants awarded under section 701 of the Act are to support the establishment or expansion of telehealth access points that would allow veterans to receive telehealth services from VA professionals. VA serves beneficiaries beyond veterans under title 38, U.S.C. and other laws. The Act, however, only uses the term veteran, so for purposes of this rulemaking, VA is only proposing that grant funds may be used to support the provision of telehealth services to veterans. We understand, however, that investment in technology and facilities

at these access points could also be used to support other VA beneficiaries.

While grant funds could not be used to establish or expand telehealth access points for non-veteran beneficiaries, such beneficiaries could access telehealth services through telehealth access points established using grant funds in either of two ways.

First, they may be able to use these telehealth access points to serve non-veterans incidentally. If a grantee used grant funds to purchase technology and renovate space to conform with security and privacy requirements for the purpose of delivering telehealth services to veterans, those costs have been incurred, and the use of those facilities for others does not result in any additional expense or cost. VA awards grants and financial support through other programs whose primary purpose is to support veterans, but which can also benefit non-veterans as well. For example, 38 U.S.C. 2011 authorizes VA to award grants for new construction of facilities, expansion, remodeling, or alteration of existing facilities, or acquisition of facilities, for use as service centers, transitional housing, or other facilities to serve homeless veterans. Section 2011(e)(4) specifically notes that applicants must provide reasonable assurances that the facilities will be used principally to provide veterans the services for which the project was designed, and that not more than 25 percent of the services provided under the project will be provided to individuals who are not veterans. Although section 701 of the Act does not include similar language, we do not believe it was the intent of Congress to prohibit the use of telehealth access points by non-veterans. This is particularly true given that these spaces may have been developed to provide access to telehealth services for the general public; placing restrictions on their use to only veterans would serve as a disincentive for potential applicants, who might lose a large portion of their beneficiary population. Particularly given that section 701(b)(3)(B) prohibits the use of grant funds to purchase new property or for major construction projects, applicants would have to have pre-existing space, and they may have been using this space to serve non-veteran patients. We do not believe Congress would have intended to create such barriers to potential applicants; section 701(d) of the Act, for example, requires VA to complete an assessment of barriers faced by veterans in accessing telehealth services and how VA plans to address those barriers. Under this proposed rule, so long as the provision of telehealth

services to non-veteran beneficiaries at telehealth access points supported using grant funds does not interfere with the provision of telehealth services to veterans, VA sees no issue with using these points to support other VA beneficiaries.

Second, grantees may form separate agreements with the Department under a different authority to furnish telehealth services specifically to non-veteran beneficiaries at telehealth access points that were established or expanded using grant funds. No provision of law, section 701 of the Act included, restricts VA's ability to form agreements with other eligible parties to create new access points, including telehealth access points, for non-veteran beneficiaries. While Congress did not use the term "beneficiary" in section 701 of the Act, we do not interpret this as evidence of an intent to exclude non-veteran beneficiaries from accessing telehealth services under any of the scenarios outlined above, again so long as that the provision of services to such individuals does not interfere with the provision of telehealth services to veterans and that the provision of such services to veterans was the primary objective of the grant award. VA would only award grant funds for services allowed under section 701.

Some telehealth access points may also furnish in-person services to veterans and other beneficiaries. We do not interpret anything in section 701 to preclude the use of such access points to provide in-person services to veterans. Modifications or enhancements to the telehealth access point made through the use of grant funds, such as training site attendants on military and veteran cultural competency, purchasing or upgrading hardware or software necessary for telehealth, upgrading existing infrastructure owned or leased by the entity, upgrading existing infrastructure to comply with the ADA, upgrading internet infrastructure and sustainment of internet services, and sustainment of telephone services, could also enhance the delivery of in-person care. Such investments, once made, do not result in additional incremental costs if they support the delivery of in-person care to veterans (or other beneficiaries). As noted above, so long as the principal purpose of the grant is to expand telehealth capabilities and support the provision of telehealth services, the improved delivery of in-person care is incidental and not prohibited. We welcome public comment on these interpretations.

We propose to add part 84 to 38 CFR to establish the telehealth grant program

as mandated by the Act. We also propose to amend 38 CFR 17.108(e), as described further below.

#### Part 17 of 38 CFR

Section 1710(g)(1) of 38 U.S.C. states that VA may not furnish medical services (except if such care constitutes hospice care) under section 1710(a) (including home health services under section 1717 of the title) to a veteran who is eligible for hospital care under the chapter by reason of section 1710(a)(3) unless the veteran agrees to pay to the United States in the case of each outpatient visit the applicable amount or amounts established by the Secretary by regulation. There are exceptions to this requirement; paragraph (3) of section 1710(g) establishes two situations in which copayments are not required, and sections 1722B and 1730A of 38 U.S.C. do as well. Specifically, section 1722B allows VA to waive the imposition or collection of copayments for telehealth and telemedicine visits of veterans under laws administered by VA. VA has implemented through regulation the copayments required by section 1710(g) at 38 CFR 17.108, which sets forth requirements regarding copayments for inpatient hospital care and outpatient medical care provided to veterans by VA. On March 6, 2012, prior to enactment of section 1722B, in a document published in the **Federal Register** at 77 FR 13195, VA determined that in-home video telehealth care should be exempt from copayments because it is not used to provide complex care and its use significantly reduces impact on VA resources compared to an in-person, outpatient visit. It also reduces any potential negative impact on the veteran's health that might be incurred if the veteran were required to travel to a VA hospital or medical center to obtain the care provided via in-home video telehealth. Paragraph (e) of 38 CFR 17.108 provides for the services not subject to copayment requirements for inpatient hospital care, outpatient medical care, or urgent care. Paragraph (e)(16), as added by the 2012 rulemaking, exempts in-home video telehealth care from the copayment requirement.

Given advances in technology, VA understands that veterans may use telehealth services in other locations than the veteran's home. These other locations may be more convenient for veterans and do not represent any additional burden on VA, so VA also proposes to exempt these encounters from copayments under the authority of section 1722B. Similarly, VA has not imposed copayments on telephone

visits or discussions with VA providers (as these are not considered "encounters" for VA's purposes), but VA's regulations have not reflected this reality. Through this rulemaking, VA is exercising its authority under section 1722B by proposing to exempt all telehealth services from copayment requirements. These services would include telehealth services provided in VA medical facilities, in-home telehealth visits, telephone visits, telehealth services provided in telehealth access points, and telehealth services received at any non-VA location, including homeless shelters and public libraries. Similarly, telehealth provided to eligible veterans by non-VA providers under the Veterans Community Care Program would be exempt from copayments, regardless of where the veteran is during the telehealth encounter. Exempting copayments for telehealth services would provide an incentive for veterans to utilize these services and be more engaged in their health care. It also would treat all telehealth services the same for purposes of applying copayments. Consequently, we propose to amend paragraph (e)(16) by exempting telehealth visits from a copayment requirement.

#### Part 84 of 38 CFR

Establishment of part 84 ensures organization and clarity for implementation of this new grant program. This proposed rule would establish regulations authorizing VA to award telehealth grants to eligible entities who would establish telehealth access points for veterans.

Consistent with section 701 of the Act, part 84 would be titled "Telehealth Grant Program."

##### Section 84.0 Purpose

Proposed § 84.0 would state the purpose of part 84. We would state that §§ 84.0 through 84.110 would establish the telehealth grant program. We would add that VA will enter into agreements, and expand existing agreements, with eligible entities (which would be defined below in § 84.5) for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants. This language is very similar to section 701(a) of the Act. In addition, we would state that, through the award of these grants, grantees will offer veterans a convenient space to connect with a VA health care professional through video telehealth in comfortable, private locations in communities where veterans may otherwise have long travel times to VA medical facilities, may have

poor internet connectivity in their homes, or may face other barriers to accessing health care. This statement reflects several of the defined uses of grants under 701(b)(3)(A), specifically: creating a comfortable space (see clauses (iv) and (v), regarding upgrading infrastructure to make rooms more conducive to telehealth and to comply with the ADA) and creating private locations (see clauses (i), (ii), (iii)(III), and (iv)(I), regarding purchasing, replacing, or upgrading hardware or software, upgrading security protocols, training with respect to privacy, and modifications to create a new, private room). We would clarify that the telehealth access point is not intended to be used for veterans who are in need of emergency health care services.

Section 701(c) of the Act provides that an eligible entity that seeks to establish a telehealth access point for veterans, but does not require grant funding under this section, may enter into an agreement, under certain conditions, with VA for the establishment of such an access point. We do not need to establish regulations concerning section 701(c) of the Act because the substance of the agreements will make clear to the affected parties their responsibilities. We would, therefore, add that part 84 would only apply to telehealth grant agreements; however, VA may enter into an agreement for the establishment of a telehealth access point for veterans with an entity that seeks to establish such an access point but does not require grant funding under part 84. We would also make such statement in the Notice of Funding Opportunity.

##### Section 84.5 Definitions

Proposed § 84.5 would contain the definitions for key terms that would be applicable to part 84 and to any Notice of Funding Opportunity (NOFO) for the telehealth grant. We would list these definitions in alphabetical order.

We propose to define the term applicant to mean an eligible entity that submits an application for a telehealth grant announced in a Notice of Funding Opportunity under part 84. VA would define the term applicant in this manner because only an eligible entity that submits an application for a telehealth grant under part 84 would be subject to any requirements of applicants. We would define this term similarly to other VA grant programs, such as the Supportive Services for Veteran Families (SSVF) program and the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SPGP). See 38 CFR 62.2 and 78.5.

We would define the term date of completion to mean the earliest of either

the date specified in the telehealth grant agreement, or any supplement or amendment thereto, or the effective date of a telehealth grant termination under § 84.110. This definition would be similar to the use of this term in other VA grant programs. See 38 CFR 62.2.

We propose to define the term eligible entity to mean an entity that meets the requirements of § 84.10. We would define this term similarly to other VA grant programs, such as the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness grant program. See 38 CFR 79.5.

We propose to define the term grantee to mean an eligible entity that is awarded a telehealth grant under part 84. This definition is similar to other VA grant programs. See 38 CFR 62.2.

We propose to define the term medically underserved to mean an area as designated under 42 U.S.C. 254b(b)(3). This term would be used to implement section 701(b)(2) of the Act, which states in part that, to the extent practicable, the Secretary shall ensure that grants are awarded to entities that serve veterans in areas determined to be medically underserved. While section 254b(b)(3)(A) defines the term medically underserved population, section 254b(b)(3) generally establishes a process for identifying medically underserved areas that are designated by the Health Resources and Services Administration (HRSA), the U.S. Department of Health and Human Services sub-agency responsible for issuing data and maps on medically underserved populations and areas in a combined manner. See HRSA's maps on medically underserved areas and populations at <https://data.hrsa.gov/tools/shortage-area/mua-find>. Because 42 U.S.C. 254b(b)(3) may be amended in the future, VA is not incorporating the actual definition in proposed § 84.05. Rather, VA is proposing to define medically underserved to mean an area that is designated under 42 U.S.C. 254b(b)(3). This term is defined consistently with its use in section 246(d)(2)(A) of Division J of Public Law 115–141 (38 U.S.C. 7601, note), and is widely known, commonplace, and established. It also allows VA to defer to the expertise of another agency that specializes in analyzing and identifying medically underserved areas and populations.

We would define Notice of Funding Opportunity (NOFO) to have the same meaning as given to this term in 2 CFR 200.1. Section 200.1 defines NOFO to mean a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The NOFO

provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application. The NOFO is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a program announcement, notice of funding availability, broad agency announcement, research announcement, solicitation, or some other term. The telehealth grant program would be subject to the requirements of 2 CFR part 200, which establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities. Citing to this definition ensures consistency and accuracy.

Section 200.1 of 2 CFR defines nonprofit organization to mean any corporation, trust, association, cooperative, or other organization, not including Institutes of Higher Education, that: (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses net proceeds to maintain, improve, or expand the operations of the organization. Although VA defines nonprofit organization differently in other grant programs (see § 62.2), we propose to use this general definition of nonprofit organization in § 84.05 to be in alignment with all other Federal grant programs. We would not repeat the definition, but rather add a cross reference in the event that this definition would change in the future. We would therefore define nonprofit organization as having the meaning given to that term in 2 CFR 200.1.

We propose to define the term subcontractor to mean any entity or organization that has a contract agreement to furnish services at the telehealth access point. Subcontractors do not include individuals who build the access point (*e.g.*, entities who are hired to paint or construct walls or partitions) or provide technical services (*e.g.*, commercial internet providers or electric services). This definition would clarify who VA would recognize as a subcontractor, which would be relevant for various requirements in the proposed rule.

We propose to define the term rural and highly rural areas to mean an area or community that is designated as such by the Rural-Urban Commuting Areas coding system of the U.S. Department of Agriculture. We would define this term to implement section 701(b)(2) of the Act, which states in part that, to the

extent practicable, the Secretary shall ensure that grants are awarded to entities that serve veterans in rural and highly rural areas (as determined through the use of the Rural-Urban Commuting Areas coding system of the Department of Agriculture). The rural-urban commuting area (RUCA) codes are a Census tract-based classification that uses standard Census measures of population density, levels of urbanization, and journey-to-work commuting to characterize all U.S. Census tracts with respect to their rural/urban status and commuting relationships to other tracts. RUCA codes define county-level metropolitan and micropolitan areas. The RUCA codes are published on the Department of Agriculture's website. See <https://www.ers.usda.gov/data-products/rural-urban-commuting-area-codes.aspx>.

We propose to define the term telehealth access point to mean a non-VA site supported by a telehealth grant where a veteran can participate in a telehealth visit with a VA health care professional. As previously stated in this rulemaking, the telehealth grant would be used to establish or expand telehealth access points in locations that are not owned by VA. This definition would make clear that telehealth access points are distinct from VA health care facilities that provide telehealth services. We note that this definition would not prohibit VA from offering other VA services (*e.g.*, hearings with the Board of Veterans Appeals or Veterans Benefits Administration consultations) through video conferencing at the telehealth access point. We clarify, though, that the provision of any such ancillary services beyond telehealth would be agreed to under separate authorities for VA to enter into agreements and establish such locations in the first place. Grant funds under section 701 could only be used for the purpose of furnishing telehealth services, but as noted previously, certain investments for the expansion or provision of telehealth services could also facilitate the delivery of other services at no additional incremental cost. Separate agreements could include the transfer of funds to grantees under separate authority if additional resources were needed to support these functions.

We propose to define the term telehealth grant to mean a grant awarded under part 84. This definition would be similar to how this term is defined in other VA grant programs. See, *e.g.*, 38 CFR 78.5 and 79.5.

### Section 84.10 Eligible Entities

In proposed § 84.10, we would list the types of entities that could be an eligible entity for this grant program. To be eligible to receive a telehealth grant, the entity must be: (1) an organization that represents or serves veterans; (2) a nonprofit organization; (3) a private business; (4) State or local government; or (5) another interested party. This would be consistent with sections 701(a) and (b)(1) of the Act, which state VA shall award grants in carrying out agreements with organizations that represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans. We note that VA considers a private company as one that is not owned or operated by a State, local, or Federal Government. We anticipate that veterans service organizations and community establishments (such as a community center or faith-based organization) may apply for these grants and would be considered either organizations that represent or serve veterans or at least nonprofit organizations. Private businesses could apply as well, and VA would specify any requirements applicable to such businesses in the NOFO. Other interested parties are included in the text of section 701(a) but is not further defined. VA does not propose a more specific definition here in the interest of ensuring that a wide variety of possible organizations can apply and, if approved, receive a grant under this program. Examples of other interested parties might include Federally Qualified Health Centers, or associations, partnerships, or other collaborations of different organizations. VA solicits comment on whether further specificity should be included and whether certain organizations or other parties should be excluded under this definition.

### Section 84.15 Application

Proposed § 84.15 would establish the application procedures for the telehealth grant. Section 701 of the Act does not provide extensive requirements associated with the requirements for applicants, as is found in other statutes. We infer from this gap that Congress delegated authority to VA to implement the necessary requirements to ensure that it could award grants consistent with Federal requirements regarding grant making and with the principles of sound fiscal policy.

We would state in proposed paragraph (a) that an applicant must

submit to VA a complete grant application package, as described in the NOFO. The NOFO would alert potential applicants of the availability of funds for the telehealth grant. The NOFO may include different application requirements based on a range of funding thresholds. For example, grant applications for technology and equipment, infrastructure upgrades, and sustainment may follow different application requirements. This variability would be included based on the potentially different uses of grant funds the applicant proposes. Some applicants may only need one-time, minimal support, such as new hardware or software or staff training. Other applicants may require long-term but still relatively minimal support (such as funds to sustain internet or telephone services that recur on a monthly basis). Other applicants may require long-term and significantly more assistance if they are undertaking infrastructure renovations that require permits or other substantial investments in time and resources. We note for general awareness that infrastructure projects using Federal funds are subject to additional requirements, such as the Build America, Buy America Act (Pub. L. 117–58). Grantees will be required to comply with the provisions of these separate authorities to the extent applicable. VA's interest in ensuring appropriate financial accountability varies based on the amount of support it is providing, and in the interest of ensuring that applicants seeking only a small amount of grant funds are not dissuaded from applying based on the compliance costs that may accompany a larger grant amount, VA proposes allowing the NOFO to further specify different requirements based on the amount of funds sought by the applicant. The requirements stated in this section reflect the most extensive requirements that applicants would need to meet, but depending upon the terms of the NOFO and ranges of support applicants seek, certain elements of these requirements could be less stringent. This paragraph would be similar to other grant programs, such as the SSVF program and the SPGP. See, e.g., §§ 62.20(a) and 78.15.

Proposed paragraph (b)(1) through (6) would state what is required for a telehealth grant application to be complete. Proposed paragraph (b)(1) would provide that the applicant must provide a plan to establish, if needed, the telehealth access point and a description of how the size, scope, and grant management plan are feasible. We recognize that some applicants may

have already established a telehealth access point, so for such applicants, a plan to establish a point is not necessary. Such applicants must, though, provide evidence that a telehealth access point has already been established. Such evidence could include site address, implementation date, VA medical facility letter of support, etc.

Proposed paragraph (b)(2) would provide that the applicant must submit supporting documentation consisting of: the type of entity that is applying for the telehealth grant pursuant to § 84.10; a proposed operating budget; supportive resources committed to the project; the applicant's ability to control the telehealth access point and meet appropriate zoning, preservation, accessibility, safety, and environmental laws (including any laws or requirements that apply based upon the receipt of grant funds under part 84); and a description of the geographic area that the telehealth access point will serve (including the name(s) of the municipalities, counties (or parishes), or Tribal lands). In addition, the applicant would have to attest that the facilities will be used principally to provide to veterans the services for which the project was designed. Documentation regarding the type of entity could consist of a letter on State or local government letterhead verifying the entity is a State or local government, or in the case of a non-profit, documentation establishing the entity's status. Private businesses could provide their business license or incorporation documents. Other interested parties should provide appropriate documentation clarifying what type of entity they are. The types of supportive resources committed to the project would include, but are not limited to, space, staffing, equipment, internet services, phone services, and furniture.

Proposed paragraph (b)(3) would provide that the application must include documentation evidencing the experience of the applicant and any identified subcontractors, as defined in § 84.5, relevant to creating an environment to provide telehealth services or organizational experience working with veterans.

Proposed paragraph (b)(4) would provide that the applicant must include a statement containing several affirmations of fact. Section 701(b)(3) of the Act establishes certain authorized uses of grant funds; these were described in detail earlier in this rulemaking. We infer that Congress authorized the use of Federal funds for certain activities or improvements with the expectation that the telehealth

access points would meet these requirements. In addition to granting funds, the Act provides in section 701(c)(2) that entities that do not require grant funding but that enter into an agreement to serve as a telehealth access point must ensure the access points are private, secure, clean, and accessible.

In this context, proposed paragraph (b)(4) would require applicants to assert that all of the following are true: the project will furnish veterans a telehealth access point that is secure, private, clean, accessible, and meets the requirements of this grant. This is consistent with the authorized uses described in section 701(b)(3)(A)(ii), (iv)(I), and (v) of the Act. We note that if Congress wanted to ensure, pursuant to section 701(c)(2), that entities that do not require Federal funds provide access points that are private, secure, clean, and accessible, it surely intended that eligible entities receiving Federal funds provide access points meeting the same requirements. Proposed paragraph (b)(4) also requires the applicant to certify that it will continue to maintain and operate the telehealth access point supported by this grant until the expiration of the period during which VA could seek full recovery under § 84.100. This is supported by section 701(a) of the Act, which requires eligible entities to enter into agreements for the expansion of telehealth capabilities and the provision of telehealth services to veterans. If grantees could accept Federal funds but cease providing telehealth services, this would be contrary to the purpose articulated by Congress. Applicants also must attest that the title or lease to the telehealth access point will lie with the applicant and the applicant will, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the applicant. Similar to the explanation provided earlier regarding the requirement to certify the applicant will continue to maintain and operate the telehealth access point, an attestation that the applicant will continue to retain possession of the property, even subject to a lease, will ensure that the purposes of this program defined by law are capable of being met. The insurance requirement also preserves the Government's interest in the items or improvements made using grant funds. However, the proposed rule would state that telehealth access points that are located on federally owned property (e.g., Department of Defense, Indian Health Service) need not be insured unless required by the terms and conditions of the Federal property

award. Other federally owned property is already subject to a sufficient surety, and any loss or damage to such property would already be incurred by the Government. The statement would also need to include an attestation that adequate financial support will be available for the duration of the grant agreement; this would have to be supported by a demonstration of financial stability and a detailed project budget, which includes, but is not limited to, all existing and anticipated sources of funds for the project. This is also necessary to ensure the continued operation of the telehealth access point and to ensure that Federal funds are not wasted. Finally, the applicant would have to attest that it will keep records and submit reports as VA may reasonably require, within the timeframes required, and, upon demand, allow VA access to the records upon which such information is based. As explained later in this discussion, proposed §§ 84.85 and 84.90 further describe the reporting and recordkeeping requirements for this grant program. These requirements are necessary to ensure that grant funds are being used for authorized purposes and the proper accounting of Federal funds.

Proposed § 84.15(b)(5) would be similar to other VA grant programs (see §§ 61.11 and 62.20) and would require that the application also include documentation of the managerial capacity of the applicant to: maintain and operate a telehealth access point where veterans who use the telehealth access point can receive high quality telehealth care from VA health care professionals; continuously assess the needs of the telehealth access point and the feedback from veterans who use the telehealth access point for quality improvement in areas such as accessibility, satisfaction, and experience; customize the telehealth access point to meet the needs of veterans who use the telehealth access point; and comply with and implement the requirements of the telehealth grant. These requirements would ensure that the access point is meeting and maintaining all requirements of the telehealth grant and is being operated consistent with the purposes set forth in section 701(a) of the Act.

Proposed paragraph (b)(6) would be similar to § 62.20(c) and would state that VA may request any additional information in writing relevant to the telehealth grant application. This is necessary to ensure that VA can verify or clarify information that is relevant to determining whether or not to award Federal funds to the applicant under section 701(a)–(b) of the Act.

These application requirements in general are similar to other VA grant programs, such as the Grant and Per Diem program and SSVF program. See §§ 61.11 and 62.20, respectively.

Proposed paragraph (c) would state that subject to funding availability, grantees may apply for one renewal grant per fiscal year, after receiving an initial grant. The grantee must submit to VA a complete renewal grant application as described in the NOFO. This requirement is similar to other VA grant programs, such as the SSVF program. See § 62.20. Additionally, under section 701(b)(3)(A)(vi) and (vii), sustainment of internet and telephone services are permissible uses of grants. Other grants, such as those involving renovations or other modifications to the physical infrastructure of a telehealth access point, may require additional funding to complete the project. While these are clear examples of grants that may make sense to be renewed from one fiscal year to another, other grants may not require further support, such as when a grant is needed only to purchase, replace, or upgrade hardware or software. The NOFO will describe any authorized uses of a renewal grant.

#### *Section 84.20 Threshold Requirements Prior To Scoring Telehealth Grant Applicants*

Proposed § 84.20 would set forth threshold requirements that applicants must meet before their applications can be scored pursuant to § 84.25 and would be similar to other VA grant programs such as SSVF. See § 62.21. In authorizing VA to award grants under section 701(a) and (b) of the Act, Congress implicitly delegated to VA the authority to determine the terms and conditions for receipt of an award. Proposed § 84.20 would provide for the threshold requirements and be similar to other existing VA grant programs, such as the SSVF program (see § 62.21). These requirements would be minimum requirements that would have to be met before VA could score applications, and eligible entities could use these to know whether they meet these threshold requirements in advance of submitting an application. The threshold requirements are intended to be an administrative checklist with which eligible entities would confirm compliance prior to submitting a telehealth grant application. VA anticipates this would reduce the amount of time and resources that VA will dedicate to evaluating and scoring applicants while also providing clear notice to eligible entities about their obligations and necessary qualifications

This would facilitate the award of grants under section 701(a) and (b)(1) by ensuring applicants provide necessary information to allow VA to consider and score their application.

We would state that VA would only score applicants that meet the following threshold requirements listed in paragraphs (a) through (h). Applicants would have to: (1) file the application within the time period established in the NOFO, and any additional information or documentation requested by VA under § 84.15(b)(6) would have to be provided within the time frame established by VA; (2) complete the application in all parts; (3) meet the eligibility criteria in § 84.10; (4) request a telehealth grant only for uses authorized under § 84.45; (5) ensure the veterans the applicant proposes to serve are eligible to receive telehealth services under title 38 of the United States Code; (6) agree to comply with the requirements of the telehealth grant; (7) not have an outstanding obligation to the Federal Government that is in arrears and not have an overdue or unsatisfactory response to an audit; and (8) not be in default by being in non-compliance with the terms and conditions of the agreement of any previous Federal assistance. These requirements, again, would ensure that grants awarded under part 84 would be a responsible use of Federal funds and would be for the purposes outlined in section 701(a) and (b) of the Act.

#### *Section 84.25 Scoring Criteria for the Telehealth Grant Applicants*

In proposed § 84.25, VA would establish the criteria to be used to score applicants who are applying for a telehealth grant. VA would need to establish these criteria because the amount of funds available for grants each year will be limited and VA may receive a higher number of applicants than there are available grant funds. Scoring criteria would allow VA to award grants to those applicants who are most qualified and would ensure that VA administers grants in a manner consistent with section 701 of the Act. Section 701 of the Act did not provide criteria for scoring applicants for the telehealth grant. As such, we propose to utilize the scoring criteria of similar VA grant programs and tailor such criteria to the telehealth grant. See, e.g., the SSVF program's scoring criteria at 38 CFR 62.22. In requiring VA to award grants, Congress understood that VA would need to establish standards to determine which applicants should receive grant awards. Congress also specifically recognized that VA would need to prioritize applicants when it

required in section 701(b)(2) of the Act that VA, to the extent practicable, ensure grants are awarded to entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved.

While this section does not include specific point values for each criterion, the regulation provides that such point values will be set forth in the NOFO. This will allow VA to retain flexibility in determining those point values each year of the grant program in the event that such point values need to change. This is similar to other VA grant programs. See, e.g., the SPGP regulations at 38 CFR 78.25.

Proposed § 84.25(a) would state that VA will award points based on the background, qualifications, experience, and past performance of the applicant and any subcontractors identified by the applicant, if relevant, as demonstrated by the criteria listed in paragraphs (a)(1) through (3). These criteria would demonstrate the applicant's knowledge and experience in working with veterans and their ability to implement the telehealth grant. These attributes would be demonstrative of the applicant's ability to manage the telehealth access point consistent with authorized purposes.

Proposed § 84.25(a)(1) would address the applicant's background and organizational history by requiring that the applicant include (1) the applicant's and any identified subcontractors' background and organizational history that would help them maintain and operate a telehealth access point for veterans; (2) evidence that the applicant, and any identified subcontractors, maintain organizational structures with clear lines of reporting and defined responsibilities; and (3) the applicant's, and any identified subcontractors', history of complying with agreements and not defaulting on financial obligations. These criteria are needed to ensure funds are being applied appropriately toward the telehealth grant and are similar to other grant programs. See § 78.25.

Proposed § 84.25(a)(2) would set forth what VA would consider in scoring the applicant's staff qualifications. This would include that evidence the applicant's staff, and any identified subcontractors' staff, have experience working with veterans or individuals receiving health care, as well as organizational experience in establishing an environment suitable for providing health care services.

Proposed § 84.25(a)(3) would set forth what VA would consider in scoring the organizational qualifications and past performance of the applicant. This

would include that the applicant, and any identified subcontractors, have organizational experience partnering with health care organizations to create an environment to provide telehealth services; the applicant, and any identified subcontractors, have organizational experience coordinating or administering telehealth services; and the applicant, and any identified subcontractors, have organizational experience working with veterans. These criteria would demonstrate the applicant's knowledge and experience in working with veterans and their ability to implement the telehealth grant. These criteria would be similar to § 62.22(a)(3).

Proposed § 84.25(b) would explain that VA would award points based on the applicant's plan to establish, maintain and operate the telehealth access point, as demonstrated by the criteria listed in paragraphs (b)(1) through (7).

Proposed § 84.25(b)(1) would explain how VA would score the need for the program. Applicants could demonstrate this by showing the need for a telehealth access point in a rural, highly rural, or medically underserved area. If the applicant is not proposing to provide telehealth services in a rural or highly rural area, or an area determined to be medically underserved, the applicant instead could demonstrate an understanding of the area and provide evidence that a telehealth access point is needed to meet the unique needs of veterans and the community to be served. As previously stated in this rulemaking, the purpose of the telehealth grant is to establish, maintain and operate a telehealth access point in locations that are rural, highly rural, or medically underserved, to the extent practicable. The applicant must demonstrate that telehealth access points would be in locations that are in accordance with the purpose of the telehealth grant and meet the needs of the community they serve. Applicants that can show they would provide telehealth services in rural, highly rural, or medically underserved areas would be prioritized, to the extent practicable and consistent with the terms of the NOFO.

Proposed § 84.25(b)(2) would explain that VA would score the applicant's outreach plan based on whether the applicant has a feasible communications plan to inform veterans about the telehealth access point and the services provided. This outreach is necessary to ensure that the telehealth access point can provide telehealth services to veterans, consistent with section 701(a) of the Act.

Proposed § 84.25(b)(3) would state that VA would score the applicant's plan to establish, maintain, and operate the telehealth access point based on whether the size, scope, and grant management plan are feasible and whether the applicant's plan is designed and scoped to meet the needs of veterans in their community through the provision of telehealth services. We would consider whether telehealth access point provides flexible hours of operation to maximize the telehealth access point's utilization. We would require this information because VA would want veterans to make the most use of the telehealth access point, which would require the applicant to be knowledgeable of the needs of veterans that would be using the telehealth access point. For example, some veterans may request use of the telehealth access point in the morning while others would prefer late afternoons. Applicants who could demonstrate they have a plan to accommodate scheduling flexibility would be scored more favorably than those who could not.

Proposed § 84.25(b)(4) would explain what VA would consider in scoring the applicant's plan to establish, maintain and operate a telehealth access point and use grant funding within the timeline specified in their application. We also would consider whether the applicant has a hiring plan in place to meet the applicant's implementation timeline or has existing staff to meet such timeline, if necessary.

Proposed § 84.25(b)(5) would state that the applicant must submit a letter of support from a local VA medical facility or facilities confirming the need for the telehealth access point and the intent of such VA facilities to work with the grantee. This letter, prepared either by a single facility or in combination by several facilities, would acknowledge the need for the telehealth access point and the intent of such facility or facilities to work with the applicant if the applicant is awarded a grant. This is essential because telehealth services necessarily involve the delivery of health care from one location to another. This letter ensures that VA facilities that would be furnishing telehealth services to the access point agree that there is a need for an access point in that area and that these facilities will work with the applicant, if awarded a grant, to provide telehealth services to the veteran in cooperation with the entity.

Proposed § 84.25(b)(6) would state that VA will score applicants based on their capacity to safely maintain and operate a telehealth access point. This would include staff resources. Similar to

§ 78.25(b)(6), this would ensure that funds are awarded to entities that can provide telehealth services to veterans through a grant.

Lastly, proposed § 84.25(b)(7) would state that VA will score applicants based on their feasibility to sustain telehealth access point operations. Similar to § 78.25(b)(7), this would ensure that funds are awarded to entities that can provide telehealth services to veterans through a grant.

Proposed § 84.25(c) would state that VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the criteria in paragraphs (c)(1) through (4). We would require that these measures be in place to continuously assess and improve, as necessary, services provided to veterans and to make certain that the applicants address any issues that may arise at the telehealth access point.

Proposed § 84.25(c)(1) would explain that VA would score the applicant's ability to evaluate the services provided at the telehealth access point. This would be based on whether the applicant provided clear, realistic, and measurable goals that reflect the grant's aim of providing a telehealth access point to veterans against which the applicant's program performance can be evaluated, as well as the applicant's plans to continually assess the telehealth access point to identify opportunities for quality improvement in areas such as accessibility, satisfaction, and experience.

Proposed § 84.25(c)(2) would explain how VA would score the applicant's ability to monitor key elements of the grant award and the telehealth access point. Proposed § 84.25(c)(2)(i) would state that VA would score whether the applicant has adequate controls in place to regularly monitor all aspects of the execution of the grant (including any subcontractors) for compliance with all applicable laws, regulations, and guidelines. This will help ensure that grant funds are used appropriately and responsibly.

Proposed § 84.25(c)(2)(ii) would state that VA would score the applicant's plan to provide an environment that is private, secure, clean and complies with the ADA where veterans can participate in their telehealth appointments. As noted previously, VA interprets section 701 of the Act to require these conditions for all participating telehealth access points.

Proposed § 84.25(c)(2)(iii) would provide that the applicant must also have financial and operational controls in place to ensure the proper use of telehealth grant funding. This

information would be required to ensure that the grantee is meeting the terms of the agreement and maintaining operations of the telehealth access point.

Lastly, proposed § 84.25(c)(2)(iv) would provide that the applicant must have a plan for ensuring that their staff and any subcontractors are appropriately trained on, and the telehealth access point maintains compliance with, all fire and safety requirements as specified by State and local laws and regulations. We would not state the specific fire and safety requirements because telehealth access points may be placed in a variety of locations, which may not require the same standards. This is similar to other grant programs. See § 61.15.

We would state in § 84.25(c)(3) that VA would score the application based on whether the applicant has a plan to establish a system to remediate aspects of the grant program that are non-compliant with the terms of the telehealth grant agreement when they are identified. Once an issue has been spotted, the applicant must have a plan in place to fix it to continue to be compliant with the terms of the agreement. This is necessary to ensure that grant funds are used appropriately and responsibly.

Lastly, § 84.25(c)(4) would state that the applicant's program management team must have the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA. This is necessary to ensure that grant funds are used appropriately and responsibly.

Proposed § 84.25(d) would state that VA will award points based on the applicant's financial capability and plan, as demonstrated by the criteria listed in paragraphs (d)(1) and (2). Proposed § 84.25(d)(1) would require that the applicant, and any identified subcontractors, are financially stable. This criterion would ensure that the funds for the telehealth grant are properly administered.

We would state in proposed § 84.25(d)(2) that the applicant must have a realistic budget for utilizing grant funding and would require applicants to submit their implementation timeframe to operate the telehealth access point. In addition, the applicant's program would have to be cost-effective and could be effectively and fully implemented on-budget. VA would award a telehealth grant based in part on the projected budget of the applicant. Failure to maintain the proposed budget could result in breach of the grant agreement. This is necessary to ensure that grant

funds are used appropriately and responsibly.

Proposed § 84.25(e) would state that VA will award points based on the applicant's area or community associations and relations, as demonstrated by the criteria in paragraphs (e)(1) through (4). Proposed § 84.25(e)(1) would require that the applicant have a plan for developing associations or have existing experience with Federal (including VA), State, local, and Tribal government agencies, as well as private entities, for the purposes of providing a telehealth access point to veterans, as applicable. This information would demonstrate associations or plans to develop relationships with the community that the applicant plans to serve, including any type of outreach activities to engage veterans in their community.

Proposed § 84.25(e)(2) would require that the applicant (or applicant's staff), and any identified subcontractors (or subcontractors' staff), as relevant, have fostered successful working relationships and experience with public and private organizations providing services to veterans. This experience would ensure the applicant has a network of resources to help it establish, maintain and operate a telehealth access point for veterans now and in the future.

Proposed § 84.25(e)(3) would require that the applicant have a presence in the area or community they intend to serve, and that the applicant understands the dynamics of the area or community they intend to serve. These criteria would ensure that the applicant understands the veterans whom they propose to serve and would facilitate engagement with these veterans to deliver telehealth services to them.

Lastly, proposed § 84.25(e)(4) would require applicants to demonstrate that their experience in the area or community they intend to serve will enhance the effectiveness of the applicant's program. This, again, is necessary to ensure that grant funds are awarded to entities that can furnish telehealth services to veterans.

#### *Section 84.30 Selection of Applicants To Receive a Telehealth Grant*

Proposed § 84.30 would state the selection process VA would use to identify applicants who would be offered a telehealth grant under part 84. Section 701 of the Act does not establish specific provisions for the selection of applicants, but Congress clearly intended VA to evaluate and select candidates, so we infer that section 701(a) and (b) implicitly delegated this authority to VA. VA is proposing to

follow a selection process that is similar to the selection process used in the SSVF program (described in § 62.25) and other grant programs, as that process has proven to be an effective and equitable means for choosing applicants. We are, therefore, basing the proposed § 84.30 on current § 62.25, but we have adapted the language for the telehealth grant. In proposed § 84.30, we would state that VA will use the process in this section to select applicants to receive telehealth grants. The process would then be set forth in proposed paragraphs (a) through (e).

Proposed paragraph (a) would explain that VA will score all applicants that meet the threshold requirements set forth in § 84.20 using the scoring criteria set forth in § 84.25. This is similar to other grant programs. See § 78.30(a). This ensures that applicants will only be scored if they meet the basic requirements already discussed.

Proposed paragraph (b) would state that VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO. This is similar to other grant programs. See § 78.30(b). This ensures that applications are evaluated relative to other, similar applications.

Pursuant to proposed paragraph (c), VA would rank those applicants who receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. The applicants would be ranked in order from highest to lowest scores, within their respective funding priority group, if any. This is similar to other grant programs. See § 78.30(c). This ensures that applicants who are selected meet certain minimum requirements.

Pursuant to proposed paragraph (d), VA would use the applicant's ranking as the primary basis for selection for funding. However, VA will prioritize entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved, as practicable. This clarification is in alignment with section 701(b)(2) of the Act, which provides that, to the extent practicable, the Secretary shall ensure that grants are awarded to entities that serve veterans in rural and highly rural areas (as determined through the use of the Rural-Urban Commuting Areas coding system of the Department of Agriculture) or areas determined to be medically underserved.

Lastly, we would state in paragraph (e) that, subject to paragraph (d), VA would fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. If multiple

applications are received from the same geographic area, the applicant's rankings would be the primary basis for selection. If funding priorities have been established, to the extent funding is available, and still subject to paragraph (d), VA would select applicants in the next highest funding priority group based on their rank within that group. This would ensure that, consistent with the requirement in section 701(b)(2) of the Act and paragraph (d), VA selects those applicants that have provided the strongest applications, within funding priorities, which should help ensure that Federal funds are put to the best use.

In proposed paragraph (f), we would explain that if an applicant would have been selected but for a procedural error committed by VA, VA could select that applicant for funding in the next applicable funding round or when sufficient funds otherwise become available (provided the applicant still wants to participate in the program). If there is no material change in the information, a new application would not be required. This would ease any administrative burden on applicants when VA committed a procedural error and could be used in situations where there is no material change in the information that would have resulted in the applicant's selection for a grant under part 84.

#### *Section 84.35 Scoring Criteria for Grantees Applying for Renewal of Telehealth Grants*

Proposed § 84.35 would state the scoring criteria for grantees applying for renewal of telehealth grants. VA would award renewal grants in situations where there is a continued need of a grant to maintain and operate a telehealth access point based on the veteran population that accesses these points. Such situations could include continued renovations or sustainment of internet or telephone services. VA would evaluate the grantee's prior year's use of the grant to maintain and operate a telehealth access point to determine the need for a renewal grant. Renewal grants may be awarded even if the number of veterans accessing the telehealth access point is small but the continued use of the telehealth access point has been beneficial to veterans' health care needs. Section 701 of the Act did not have provisions for the scoring of telehealth grants renewals, and we would, therefore, use the provisions of similar VA grant programs such as the SSVF program because these provisions are essential to the effective and efficient administration of a grant program and because we infer that

Congress implicitly delegated this authority, as discussed above. See § 62.24.

While this section would not include specific point values for the criteria, such point values will be set forth in the NOFO. This would allow VA to retain flexibility in determining those point values each year of this grant program and would be consistent with the process for an initial award under part 84.

Proposed § 84.35(a) would state that VA will assess the success of the grantee's program, as measured by veteran satisfaction with the services provided by the grantee and how the grantee met the telehealth grant goals and requirements for VA to deliver telehealth services to veterans at that telehealth access point in accordance with the agreement. These measures should provide a clear basis to determine the success of the program based on veteran feedback and VA's experience with the grantee in terms of delivering telehealth care through the access point.

Proposed paragraph (b) would state that VA will assess the cost-effectiveness of the grantee's telehealth access point, as demonstrated by how the hours for the point attendant (the grantee staff assisting veterans in using the telehealth access point) correlate with the veterans' telehealth appointments and how the telehealth access point was implemented effectively using the available funding in the designated timeframe.

Proposed paragraph (c) would state that VA will assess the extent to which the grantee complies with all applicable laws, regulations, and guidelines for the administration of the telehealth access point. This is necessary to ensure that grant funds are supporting efforts consistent with all legal requirements.

#### *Section 84.40 Selecting Grantees for Renewal of Telehealth Grants*

Proposed § 84.40 would establish the selection criteria for renewal of telehealth grants. Section 701 of the Act did not have provisions for the selection of telehealth grants renewals, but we infer this was an implicit delegation of authority by Congress because this would be needed for the administration of the grant program required by section 701(a) of the Act. We would, therefore, base the requirements in this proposed section on the provisions of similar VA grant programs, such as the SSVF program (see § 62.25). These provisions are essential to the effective and efficient administration of a grant program.

Proposed paragraph (a) would state that, provided the grantee continues to meet the threshold requirements (in proposed § 84.20), VA would use the scoring criteria (in proposed § 84.35) to evaluate the renewal grant application. This is similar to other grant programs, such as the SSVF program. See § 62.25(a).

Proposed paragraph (b) would explain that VA will rank those grantees who receive at least the minimum amounts of total points and points per category set forth in the NOFO. The grantees will be ranked in order from highest to lowest scores within their respective funding priority group, if applicable. This is similar to other grant programs, such as the SSVF program. See § 62.25(b). This would also be similar to how new applicants would be evaluated under part 84.

Proposed paragraph (c) would state that VA will use the grantee's ranking as the primary basis for the selection for funding. Similar to new applicants, though, VA would prioritize entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved, to the extent practicable. VA would fund the highest-ranked grantees for which funding is available within their respective funding priority group, if applicable. This also would be similar to other grant programs and how new applicants would be evaluated under part 84.

Pursuant to proposed paragraph (d), VA would retain the discretion to award any deobligated funds to an applicant or existing grantee. This is similar to other grant programs, such as the SSVF program. See § 62.25(d). We would further explain in proposed paragraph (d)(1) that if VA chose to award deobligated funds to an applicant or existing grantee, VA could first award the deobligated funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee would need to have the capacity and agree to provide prompt services to the affected community. Under this section, the relevant NOFO would be the most recently published NOFO which covers the geographic area that includes the affected community. In proposed paragraph (d)(2), we would explain that if the first such applicant or grantee offered the deobligated funds refuses the funds, VA would offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1), and continue on in rank order until the deobligated funds

are awarded. Under proposed paragraph (d)(3), VA could offer to award funds under other conditions, or could choose to not award the deobligated funds at all, when VA determines appropriate based on other relevant factors. For example, if a grantee had been maintaining and operating a telehealth access point in a community and VA opened a new clinic in that community, the continued need for a telehealth access point there may be limited. It may be more appropriate for another location to receive those funds to provide telehealth services to other veterans with limited access to care. We believe this is the most likely reason to shift funds from one community to another, but it is not necessarily the only reason, so we leave open the possibility that we may need to reallocate deobligated funds to other communities. There may also be situations where it would not make sense to award deobligated funds, such as near the end of a fiscal year when only limited funds would remain. VA would consider other relevant factors in making these decisions and act accordingly.

Paragraph (e) would authorize VA to select an existing grantee for available funding, in the next applicable funding round or when sufficient funds otherwise become available, based on the grantee's previously submitted renewal application, if that grantee is not initially selected for renewal because of a procedural error by VA (and provided the applicant is still interested in participating in the program). If there is no material change in the information, a new application would not be required. This would ease any administrative burden on grantees and could be used in situations where there is no material change in the renewal grant application that would have resulted in the grantee's selection for renewal of a grant under part 84. This is similar to other grant programs, such as the SSVF program. See § 62.61. It is also similar to the provisions regarding new applicants described above.

#### *Section 84.45 Awards for the Telehealth Grant*

Proposed § 84.45 would establish how awards for telehealth grants could be used, related exclusions, and VA's ability to enter into agreements with organizations for the establishment of telehealth access points.

Proposed paragraph (a) would list the permissible uses of grant funds awarded under part 84. This would be consistent with section 701(b)(3) of the Act, which provides for the general use of grant

funds. Paragraphs (a)(1) through (7) are consistent with clauses (i) through (vii) in section 701(b)(3)(A) of the Act.

Proposed paragraph (a)(1) would reflect the criterion from section 701(b)(3)(A)(i), which states that telehealth grant funds may be used for purchasing, replacing, or upgrading hardware or software necessary for the provision of secure and private telehealth services. Proposed paragraph (a)(1) would clarify that the equipment and software must be compatible with telehealth requirements as described in the NOFO and be purchased under warranty. We would not place these requirements in regulation as technological advances would require VA to constantly update its regulations to reflect the new hardware and software requirements. Grantees may contact VA with any questions they may have regarding the correct hardware or software needed in the telehealth access point prior to their purchase. In addition, purchasing the equipment and software under warranty safeguards the grantee against any manufacturer's defect that might render the equipment or software faulty. We also encourage grantees to purchase an extended warranty for the hardware and software to safeguard against any costs beyond the manufacturer's warranty. VA is aware that some grantees may not have the technological expertise to set up the hardware and software in the telehealth access points and as such, we would also clarify that the telehealth grant funds may be used to purchase services to configure and set up grantee-purchased equipment. This would be needed to ensure installation and functionality of the equipment. In addition, VA would provide direct technical support for the initial connection to a VA-secure application, and continued VA technical support for issues that may arise with the connection to the VA-secure application during the term of the grant. We emphasize, though, that this technical support would only extend to issues regarding VA's platform or its network and would not extend to any technical issues the grantee is experiencing on its side of the connection.

We understand that some organizations expressed interest in VA providing equipment and software directly to applicants, but we have not proposed to do so here. VA's other grant programs involve the distribution of financial resources to grantees so they can obtain goods and services as needed to perform the functions of the grant program. Adhering to this model for this grant program is appropriate for several reasons. First, disbursing funds is a

more well-established and well-known process that would avoid potential delays or issues with implementation. Second, VA would have no way of knowing in advance the quantity of hardware and software reasonably expected to be required by the grantees that would request VA-purchased hardware and software. If not all of the VA-purchased hardware and software were awarded to grantees, VA would be left with excess equipment that would be rendered outdated after a few years due to changes in technology. Not only would this mean a loss of revenue for VA, but, more importantly, it would decrease the amount of grant funds available for grantees. This would leave communities that are in need of a telehealth access point without the ability to provide health care services to veterans. Third, and as noted previously, VA encourages grantees to use awards to purchase warranties and service plans to ensure that technological support and services are available when needed. This preserves a cleaner distinction between VA involvement and the grantee's operations. As such, we will not be awarding VA-purchased hardware or software as part of the grant agreement with the grantee. If grantees identify significant issues with this approach, VA can consider whether another approach would be legally permissible and more appropriate.

Proposed paragraph (a)(2) would be consistent with section 701(b)(3)(A)(ii), which states that the telehealth grant may be used for upgrading security protocols for consistency with the security requirements of the Department of Veterans Affairs. We would state that telehealth grants may be used for upgrading security protocols for consistency with VA security requirements and digital applications. We would further state that these security requirements would be described in the NOFO. Telehealth access point services would be delivered through the VA Video Connect secure application or other programs. We would not use the term VA Video Connect in this rule in the event the platform name changes in the future to avoid amending the regulation. Security protocols may include antivirus or information security programs, encryption, or other programs or requirements.

Proposed paragraph (a)(3) would be consistent with section 701(b)(3)(A)(iii) of the Act, which states that telehealth grants may be used for the training of site attendants, including payment of those attendants for completing that training. We would state that telehealth

grant funds may be used for the payment for the training of telehealth access point attendants, including payment of those attendants for completing that training, with respect to: (1) military and veteran cultural competence, if the entity is not an organization that represents veterans; (2) equipment required to provide telehealth services; (3) privacy, including the Health Insurance Portability and Accountability Act (HIPAA) of 1996 privacy rule under 45 CFR part 160 and part 164, subparts A and E, as it relates to health care for veterans; (4) scheduling for telehealth services for veterans; or (5) any other unique training needs for the provision of services to veterans in a telehealth access point.

We note that section 701(b)(3)(A)(iii) only authorizes the use of grants to pay for wages or salaries of site attendants when they are engaged in training described in that clause. We interpret this to mean that grant funds may not be used otherwise to pay for salary or wages for site attendants when they are not engaged in training. We understand this limitation could prove an obstacle for some potential applicants for grants under part 84, so we are taking this opportunity to clarify that while grant funds cannot be used to pay salaries or wages for site attendants, VA could enter into separate agreements under separate authorities for these services. VA has general authority to appoint staff to provide support to veterans receiving health care through telehealth. VA similarly can contract for others to provide telehealth services, or to support the delivery of telehealth services, to veterans. While grant funds under part 84 are not authorized to pay salaries and wages, VA could enter into separate agreements, such as contracts, with grantees to cover these costs. These separate agreements would not be grant agreements under part 84 and would not be governed by the terms and conditions of part 84 or the grant agreement themselves. These separate agreements would be authorized by provisions of law other than section 701 of the Act and would be governed by those laws, any applicable regulations, and the terms of these separate agreements. As such, we are not including the payment of salaries or wages for site attendants in this rulemaking, but we do provide this clarification so that eligible entities who are interested in applying for a telehealth grant but who also need financial assistance to pay staff to administer the telehealth access points understand the limits of the grant program and the alternative

arrangements VA is considering to try to address this potential issue.

Proposed paragraph (a)(4) would be consistent with section 701(b)(3)(A)(iv) of the Act, which provides that the telehealth grant may be used for upgrading existing infrastructure owned or leased by the entity to make rooms more conducive to telehealth care, including: (1) additions or modifications to windows or walls in an existing room, or other alterations as needed to create a new, private room, including permits or inspections required in association with space modifications; (2) soundproofing of an existing room; (3) new electrical, telephone, or internet outlets in an existing room; or (4) aesthetic enhancements to establish a more suitable therapeutic environment. We would state that telehealth grant funds may be used for these purposes generally, and regarding aesthetic enhancements, we would specifically include, but not limit to, enhancements such as seating for both the veteran and caregiver, bariatric seating, and adequate lighting. These are examples of enhancements that would make the environment more suitable for therapeutic purposes by supporting the needs of the veteran (and by extension, a caregiver of a veteran). We note that a caregiver, as used in this context, is not limited to a caregiver recognized by or participating in a program of caregiver assistance administered by VA.

Proposed paragraphs (a)(5) through (7) would be consistent with section 701(b)(3)(A)(v) through (vii) of the Act, which state that telehealth grants may be used for upgrading existing infrastructure to comply with the ADA; upgrading internet infrastructure and sustainment of internet services; and sustainment of telephone services.

Proposed paragraph (b) would address other exclusions to the use of grant funds. Section 701(b)(3)(B) of the Act states that telehealth grant funds may not be used for the purchase of new property or for major construction projects, as determined by the Secretary. We would mirror this exclusion in proposed paragraph (b) by stating that telehealth grant funds may not be used for the purchase of new property or for major construction projects, or for the acquisition of new space through other arrangements (such as a lease agreement), as determined by VA. Funds could not be used to acquire new space through other arrangements, such as a lease agreement. We would add that major construction would consist of new construction, or activities that would increase the square footage of an existing facility (e.g., relocation of

existing exterior walls, roofs, or floors). We would not further define major construction in the regulation, but we could provide clarification in the NOFO. We would retain flexibility to provide further clarity through the NOFO to allow for adjustment to changing conditions or situations, both generally and specifically based on the needs of veterans, applicants, and grantees.

#### *Section 84.50 General Operation Requirements*

Proposed §§ 84.50 through 84.110 provide general parameters for this grant program that are similar to requirements established in other VA grant programs. These are administrative provisions regarding grant administration. As noted previously, there is little in section 701 of the Act that addresses the issues that would be covered by these provisions directly, but we interpret that as an implicit delegation by Congress to VA, as these requirements are necessary for the consistent and appropriate administration of this grant program. Sound administration is necessary to ensure VA and grantees are financially responsible in the use of Federal funds.

Proposed § 84.50 would establish general operation requirements for telehealth access points and grantees. These requirements would make certain that all grantees adhere to the same standards for maintaining the telehealth access points and administering the grants. This section would be similar to other VA grant programs such as the SSVF program. See § 62.36.

We would state in proposed paragraph (a) that grantees must maintain the confidentiality of veterans utilizing the telehealth access point. Maintaining the confidentiality of veterans is paramount in keeping with VA's standards of provision of services to veterans. We would add that the grantees could not keep any records on the veterans who use the telehealth access point. These records are maintained exclusively by VA. As previously stated in this rule, VA will provide services at the telehealth access points through a secure internet application. The grantees will not have access to the veteran's information. We would state, however, that this prohibition only applies to veteran records, however, grantees must maintain a record of the hours the point attendant provides services to veterans. These records would be used by VA to make certain that the grantee is utilizing telehealth grant funds appropriately and the point attendant is only performing duties related to the telehealth access point.

Proposed paragraph (b) would establish the grantees' responsibility to operate and maintain the telehealth access point. This requirement would be needed to make certain that the grantee is providing the required services in the telehealth access point.

We would state in proposed paragraph (c)(1) that the grantee must notify each veteran that the telehealth services are being provided by VA. We would require grantees to notify veterans that telehealth services are being provided by VA because under section 701(a) of the Act, grantees are required to support VA's provision of telehealth services to veterans.

We would also state in proposed paragraph (c)(2) that the grantee must notify the veteran of any conditions or restrictions on the receipt of telehealth services by the veteran. We would allow grantees to create such rules and standards as are necessary for the safe and effective operation of the telehealth access point. We would add that the grantee has the right to prohibit services to veterans who have demonstrated disruptive behavior within their facility. This would ensure the safety of the telehealth access point attendants, other veterans utilizing the point, and caregivers of such veterans.

We would state in proposed paragraph (d) that the grantee must participate in telehealth program evaluation interviews and surveys. This participation will help to improve services and enhance veterans' experience.

We would state in proposed paragraph (e) that grantees must regularly assess that the grant funds are utilized according to the agreement. This is necessary to ensure proper accounting for and use of Federal funds. Failure to utilize grant funds according to the agreement would be a breach of the agreement.

We would state in proposed paragraph (f) that grantees must ensure that telehealth grants are administered in accordance with the requirements of part 84, the telehealth grant agreement, and other applicable laws and regulations. Further, grantees would be responsible for ensuring that any subcontractors, carry out activities in compliance with this telehealth grant program agreement, laws, and regulations.

Proposed paragraph (g) would state that the grantees must follow, implement, and adhere to all requirements in the grant agreement and in 2 CFR part 200 on the use and disposition of property improved and/or equipment acquired under the telehealth grant program. Regulations at

2 CFR part 200 generally provide for the use and disposition of property once the grantee is no longer participating in the telehealth grant program. If potential applicants are interested in which regulations may be potentially relevant, VA would direct such individuals to review 2 CFR 200.311(c), 200.312, 200.313, and 200.439. VA's draft grant agreements will include specific terms setting forth disposition requirements for grantees and will be consistent with these regulations.

The disposition of property includes any additions or modifications to windows or walls in an existing room, or other alterations as needed to create a new, private room for the telehealth access point. Disposition would also include any federally owned telehealth equipment or equipment acquired with telehealth grant funds. The recoupment of funds used for property improvements made or equipment acquired under the telehealth grant would also be stated in the NOFO. VA would provide for the specifics regarding the improvement, maintenance, and disposition of upgraded infrastructure or purchased equipment in the telehealth grant agreement.

#### *Section 84.55 Fee Prohibition*

Proposed § 84.55 would state that grantees must not charge a fee to veterans for providing VA services in telehealth access points that are funded with amounts from the telehealth grant. Under section 701(a) of the Act, grantees are required to support VA's provision of telehealth services to veterans. As proposed elsewhere in this rule, VA would eliminate copayment liability on the part of veterans who use telehealth services for VA care; prohibiting grantees from charging veterans for these services would ensure parity and support the ultimate goal of this program; to increase veterans' access to care. We also believe this would be consistent with current practice. We do not believe Congress intended to allow grantees to charge veterans for the use of telehealth access points; this type of decision would be a significant departure from other VA care and would deter utilization of these locations, which would be contrary to the goal of increased access. Further, section 701 of the Act does not authorize the collection of fees by grantees, and we do not believe Congress would have been silent on such a major issue if it had intended for grantees to receive such payments. This is consistent with the intent of the Act and similar to other VA grant programs,

such as the SSVF program. See 38 CFR 62.37.

#### *Section 84.60 Notice of Funding Opportunity (NOFO)*

As previously stated in this rulemaking, a NOFO would alert eligible entities that there are funds available for the telehealth grant. Proposed § 84.60 would explain what would be included in a NOFO. This would align with other VA grant programs, such as the SSVF program (see § 62.40). This would also be consistent with the requirements and recommendations within 2 CFR part 200 regarding notices of funding opportunity (see 2 CFR 200.204).

In proposed § 84.60, we would state that when funds are available for the telehealth grant, VA will publish a NOFO. We would also state that VA has the authority to modify the duration, amount, or both of an existing telehealth grant agreement, subject to availability of funding and grantee performance, as set forth in § 84.65. We would make this statement to allow VA to modify an existing telehealth grant depending on the performance of the grantee to provide services at the telehealth access point. The NOFO would identify: (1) the location for obtaining the applications for the telehealth grant; (2) the date, time, and place for submitting completed telehealth grant applications; (3) the estimated amount and type of grant funding available; (4) any priorities for or exclusions from funding to meet the requirements of the telehealth grant and VA goals for providing telehealth services to veterans; (5) the length of term for the telehealth grant award; (6) specific point values to be awarded for each criterion listed in §§ 84.25 and 84.35; (7) the minimum number of total points and points per category that an applicant or grantee, as applicable, must receive for a telehealth grant to be funded; (8) any maximum award amounts for the telehealth grant; (9) the timeframes and manner for payments under the telehealth grant; and (10) other information necessary for the telehealth grant application process as determined by VA. These provisions would ensure that eligible entities have all necessary information to submit a complete and timely application for a telehealth grant under part 84.

#### *Section 84.65 Telehealth Grant Agreements*

As previously explained in this rulemaking, section 701(a) of the Act provides that VA shall enter into agreements, and expand existing agreements, with organizations that

represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants for telehealth. Proposed § 84.65 would provide what the telehealth grant agreement entails and would align with 2 CFR 200.201 and other VA grant programs, such as the SSVF program. See § 62.50.

Proposed paragraph (a) would apply to grant agreements for the initial telehealth grant. We would state that after an applicant is selected for a telehealth grant in accordance with § 84.30, VA will draft a telehealth grant agreement to be executed by VA and the applicant. Upon execution of the telehealth grant agreement, VA would obligate grant funds to cover the amount of the approved grant, subject to the availability of funding. We would also state that the telehealth grant agreement would provide that the grantee agrees, and will ensure that each subcontractor, as relevant, agrees, to: (1) operate the telehealth access point in accordance with the provisions of part 84 and the applicant's telehealth grant application; (2) comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of providing services in a telehealth access point in an effective and efficient manner; and (3) provide such additional information as deemed appropriate by VA. These requirements would ensure compliance with legal requirements associated with the grant and with proper and effective administration of a telehealth access point.

Proposed paragraph (b) would apply to instances where the grantee has already received an initial grant for telehealth and is applying for renewal of a telehealth grant. We would state that after a grantee is selected for renewal of a telehealth grant in accordance with § 84.40, VA would draft a telehealth grant agreement to be executed by VA and the grantee. Upon execution of the telehealth grant agreement, VA would obligate grant funds to cover the amount of the approved telehealth grant, subject to the availability of funding. To avoid redundancy in regulations, we would state that the agreement for the renewal of the telehealth grant will contain the same provisions described in paragraph (a). As with paragraph (a), these requirements would ensure compliance with legal requirements associated with the grant and with proper and effective administration of a telehealth access point.

We would provide in paragraph (c) that grantees may not use funds provided under part 84 to replace Federal, State, Tribal, or local funds previously used, or designated for use, to establish a telehealth access point. Grantees must only use funds for the purposes stated in part 84. This is necessary to ensure that grant funds are not used as a substitute for other available resources.

Lastly, we would provide in proposed paragraph (d) that subject to §§ 84.60 and 84.100, the availability of funding, and grantee performance, VA may modify an existing telehealth grant agreement by one or both of the following: (1) extending or reducing the period for which the telehealth grant was established; and (2) increasing or decreasing the amount of funds awarded. These modifications would be contingent upon the grantee's provision of services at the telehealth access point. Also, any extension of funds would be provided based on the availability of funds. VA would provide in the NOFO the terms under which extensions would be granted. Any reduction in funds or period of the telehealth grant agreement would be subject to the provisions in § 84.100.

#### *Section 84.70 Program or Budget Change and Corrective Action Plans*

Proposed § 84.70 sets forth the requirements for changes to the telehealth grant agreement that propose significant changes that would alter the terms of the agreement. These requirements would be similar to how VA manages program and budget changes and corrective action plans in other VA grant programs, such as the SSVF program. See § 62.60. The requirements would also allow VA to ensure that grant funds are used appropriately and maintain control over the quality of the services provided by the grantee. This section is also consistent with 2 CFR 200.308, which establishes policy and processes for revision of budget and program plans for Federal awards. VA does not intend to waive any modifications that would require prior written VA approval as authorized by 2 CFR 200.308(e).

Proposed paragraph (a) would cover instances in which a grantee requests a modification to their telehealth grant agreement. We would state that a grantee must submit to VA a written request to modify a telehealth grant agreement for any proposed significant change that will alter the agreement. We would also state that if VA approves such change, VA will issue a written amendment to the telehealth grant agreement. In addition, grantees would

have to receive VA's approval prior to implementing a significant change. This would ensure that the grant agreement is current and accurate.

We would state in proposed paragraph (a)(1) what would constitute a significant change to the telehealth grant agreement. A significant change would include, but not be limited to, a change in the grantee or any subcontractors, identified in the telehealth grant agreement; a change in the area or community served by the grantee; or addition or removal of equipment, connectivity, or other services provided by the grantee; and a change in budget line items that are more than 10 percent of the total telehealth grant award. These are common examples of possible changes, but they are not an exhaustive list; VA proposes to retain flexibility to address novel circumstances as they arise. If applicants or grantees have questions about whether a change would constitute a significant change, they may contact VA for assistance.

Proposed paragraph (a)(2) would state that VA's approval of changes would be contingent upon the grantee's amended application retaining a high enough rank to have been competitively selected for funding in the year that the application was granted. This would ensure that grant funds are used for purposes that would have received an award if the modified terms had been the initially proposed terms.

We would state in proposed paragraph (a)(3) that each telehealth grant modification request must contain a description of the revised proposed use of telehealth grant funds. This, again, would ensure that the grant agreement accurately reflects the intended use of funds and operation of the telehealth access point.

Proposed paragraph (b) would provide for corrective action plans that a grantee must submit to VA if the grantee's expenditures vary from the expenditures listed in the agreement. We would state that VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if actual telehealth grant expenditures vary from the amount disbursed to a grantee or actual telehealth grant activities vary from the telehealth grant agreement. Reporting frequency may be on a bi-monthly, monthly, or quarterly basis. We would add in proposed paragraph (b)(1) that the CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the

corrective action(s). We would also state in proposed paragraph (b)(2) that, after receipt of the CAP, VA would send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA would make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this program. This would ensure that grant funds are used for appropriate and authorized purposes, and that such funds are used responsibly.

Proposed paragraph (c) would provide that grantees must inform VA in writing of any key personnel changes, local or national, (e.g., new executive director, telehealth grant program director, or chief financial officer) and grantee address changes within 30 days of the change. This would ensure that critical changes that might affect the maintenance and operation of the telehealth access point are communicated to VA in a timely manner.

#### *Section 84.75 Faith-Based Organizations*

Proposed § 84.75 would state that organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the telehealth grant under part 84 in accordance with 38 CFR part 50. Part 50 explains that faith-based organizations are eligible to participate in VA's grant-making programs on the same basis as any other organizations, that VA will not discriminate against faith-based organizations in the selection of service providers, and that faith-based and other organizations may request accommodations from program requirements and may be afforded such accommodations in accordance with Federal law.

VA would apply the provisions of 38 CFR part 50 to the telehealth grant. However, we would not restate the provisions of part 50 in proposed part 84 but would merely cite to it. VA recently amended part 50 on March 4, 2024 (89 FR 15671), and in the event that part 50 is further amended in the future, VA would not need to amend part 84.

#### *Section 84.80 Financial Management*

Proposed § 84.80 would provide for the grantee's financial management of the telehealth grant and would be similar to other VA grant programs, such as the SSVF program. See § 62.70. These provisions are necessary to ensure that grantees comply with applicable Federal law, regulations, and policy and that grant funds are used appropriately.

Proposed paragraph (a) would state that grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200. As noted previously, 2 CFR part 200 establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.

Proposed paragraph (b) would state that grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

Proposed paragraph (c) would state payment up to the amount specified in the telehealth grant must be made only for allowable, allocable, and reasonable costs in establishing, maintaining, and operating the telehealth access point. We would add that the determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

Proposed paragraph (d) would state that, in accordance with 2 CFR 200.414, applicants that do not have a negotiated indirect cost rate (NICRA) may (1) request a de minimis rate, which is in accordance with the amounts set forth in 2 CFR 200.414(f). In the alternative, applicants may (2) apply the NICRA established with their cognizant agency for indirect costs (as defined in 2 CFR 200.1) or may (3) request to negotiate an indirect cost rate with VA.

#### *Section 84.85 Telehealth Grant Reports*

Proposed paragraph § 84.85 would establish the reporting requirements for the telehealth grant. Such reporting requirements would ensure that grant funds are being used consistent with the Act and with part 84. In addition, the reports would allow VA to be transparent and show that it is being a good fiscal steward of the taxpayer dollar. Additionally, this is similar to how VA administers other grant programs such as the SSVF program. See § 62.71. Reporting requirements tasked to grantees will be in accordance with their risk level associated with their risk assessment and set forth in the NOFO. Examples may include bi-monthly, monthly, or quarterly reports of grant funding awarded.

Proposed paragraph (a) would state that VA may require grantees to provide, in any form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the telehealth grant.

Proposed paragraph (b) would state, grantees must report on the deviations to grant expenditures to VA on a basis determined by VA (e.g., bi-monthly, monthly, or quarterly) in accordance with the results of their risk assessment; this would be set forth in the NOFO. We would add a note to proposed paragraph (b) to direct the reader to information on corrective action plans, which may be required in this circumstance, and to see § 84.70.

Proposed paragraph (c) would require grantees, at least once per year, to submit to VA a report that describes grant agreement compliance, legal and regulatory compliance, the activities for which the telehealth grant funds were used, including but not limited to, the equipment costs, renovation expenses, attendant expenses, any other types of ongoing expenses for services provided during the year covered by the report, and any other information that VA may request.

To be fully informed on how the grantee utilizes the telehealth grant funds, we would state in proposed paragraph (d) that VA may request additional reports to allow VA to fully assess the provision or coordination of the provision of services under part 84.

Proposed paragraph (e) would state that all pages of the reports must cite the assigned telehealth grant number and be submitted in a timely manner as set forth in the grant agreement.

Proposed paragraph (f) would state that grantees agree to allow VA to post information from reports on the internet or use such information in other ways deemed appropriate by VA (including, but not limited to, activities regarding litigation). Grantees should clearly mark confidential information to assist VA in redacting such information when appropriate. We would expressly call out litigation activities as one use for which grantees would have to consent to VA's use of information, but we emphasize this is not the only potentially permissible use. We would add that grantees must clearly mark information that is confidential to individual veterans so VA could exclude such information from any public use. We do not anticipate that any such information would be included given the prohibition on the retention of records on the veterans who use the telehealth access point under proposed § 84.50(a), but we propose including this language out of an abundance of caution.

#### *Section 84.90 Recordkeeping*

Proposed § 84.90 would provide recordkeeping requirements for the telehealth grant. This provision would

be similar to other VA grant programs such as the SSVF program (see § 62.72) and 2 CFR 200.334, requiring Federal award recipients to keep financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award for a three-year retention period. We would state that grantees must ensure that records are maintained for at least a three-year period (unless a longer period is otherwise required) to document compliance with the telehealth grant. We would add that grantees must produce such records at VA's request.

#### *Section 84.95 Technical and Technological Assistance*

VA understands that eligible entities may need technical assistance in complying with requirements of part 84. VA currently provides technical assistance to other grantees through other programs. See, e.g., § 62.73.

Proposed paragraph (a) would state that VA will provide technical assistance, as necessary, to eligible entities to meet the requirements of part 84. This assistance is available to eligible entities, not just grantees, and can include assistance with applying for a grant under part 84 or administering a grant awarded under part 84.

In addition, we recognize that grantees may sometimes experience technological issues or challenges when connecting to VA's secure application and may need technological assistance throughout the length of the telehealth grant agreement. We would state proposed paragraph (b), that VA will provide technological assistance, as necessary, to grantees to ensure that the grantee's equipment is able to connect to the VA system and network as necessary to support the delivery of telehealth services. As noted above, proposed § 84.45(a)(1) would require that all equipment must be compatible with telehealth requirements as described in the NOFO and be purchased under warranty. The provision of technological assistance to grantees is implicitly authorized by section 701 of the Act, as it would frustrate the purpose of this program if grantees were experiencing technological issues unique to accessing VA's system and VA was unable to assist in resolving these issues. This assistance is also no different than what VA provides for other members of the public attempting to use VA platforms or networks; if there are service outages or disruptions, these issues are reported to VA, and VA works to address them to restore operability. We emphasize, though, as noted above, that this

assistance would be limited to VA's secure platform and its network; any issues regarding the grantee's equipment or network would not be addressed through VA's technological assistance described here. VA encourages grantees to purchase warranties and service plans, as appropriate, to resolve technological issues with their networks or equipment.

Proposed paragraph (c) would state that the technical and technological assistance will be provided either directly by VA or through grants or contracts with appropriate public or nonprofit private entities. Like paragraph (b), this assistance would be limited to issues with VA's platform or network. This proposed section would align with other VA grant programs, at least in relation to the provision of technical assistance, while also addressing unique issues raised by this program. It would also be consistent with how VA provides similar support to the public with other platforms to ensure operability.

*Section 84.100 Withholding, Suspension, Deobligation, Termination, and Recovery of Funds by VA*

If a grantee fails to comply with the terms of the telehealth agreement, VA could withhold, suspend, deobligate, terminate, or recover grant funds. Section 84.100(a) would explain that VA would enforce part 84 through such actions as may be appropriate. Appropriate actions would include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

Part 200 of 2 CFR describes such actions. See 2 CFR 200.208, 200.305, 200.339 through 200.343, and 200.346. As telehealth grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in proposed § 84.100 to ensure that grantees understand and know where to locate these requirements related to withholding, suspension, deobligation, termination, and recovery of funds. VA refers to 2 CFR part 200 rather than include those requirements in this section as those requirements in 2 CFR part 200 may change. Referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

VA acknowledges that when certain actions (such as suspension and termination) are taken against grantees pursuant to this section and 2 CFR part 200, a disruption in services to veterans may occur. We would state in proposed § 84.100(b)(1) that upon taking a remedy for noncompliance under paragraph (a),

grantees have 30 days to object and provide information and documentation challenging the action, subject to three conditions: (1) objections must be provided to VA in writing; (2) VA's decision stands while an objection is under consideration; and (3) other VA decisions (such as competing award decisions, continuation award decisions, decisions made with the consent of the recipient) are not subject to this opportunity to object. Specifically regarding this third condition, VA could begin making other decisions, such as reallocating funds under an existing or future NOFO.

We would add in proposed § 84.100(b)(2) that the grant agreement will provide additional requirements and responsibilities for grantees in the event of noncompliance under paragraph (a). This will ensure that the disruption and impact upon veterans is minimized as much as possible.

*Section 84.105 Oversight*

To verify that the telehealth grant is utilized in accordance with the agreement, VA may inspect the telehealth access points and records of any entity that has received a telehealth grant when VA deems necessary to determine compliance with §§ 84.0 through 84.110. We would state such requirement in this section, which would align with other VA grant programs, such as the SSVF program (see § 62.63). We would add that the authority to inspect does not authorize VA to manage or control the organization. We would also state that monitoring and oversight requirements for each grantee would be determined by a pre-award risk assessment under 2 CFR 200.206. This would reduce the burden for complying with oversight requests for those grantees whose awards are below certain thresholds established in the NOFO.

*Section 84.110 Telehealth Grant Closeout Procedures*

Proposed § 84.110 would describe the telehealth grant closeout procedures. Section 84.110 explains that telehealth grants would be closed out in accordance with 2 CFR part 200. Procedures for closing out Federal awards are currently located at 2 CFR 200.344 and 200.345. As telehealth grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in § 84.110 to ensure that grantees understand and know where to locate these requirements. VA refers to 2 CFR part 200 rather than include the current citations to those requirements or outline the actual closeout requirements in this section because 2

CFR part 200 may change. Referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

**Executive Orders 12866, 13563 and 14094**

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on participating eligible entities who are awarded grants by VA or small businesses. To the extent there is any such impact, it will result in financial assistance and revenue for them as they purchase, upgrade, or install new technologies or infrastructure. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any

one year. This proposed rule would have no such effect on State, local, and Tribal governments, or on the private sector.

### Paperwork Reduction Act

This proposed rule includes provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through [www.regulations.gov](http://www.regulations.gov). Comments should indicate that they are submitted in response to “RIN 2900–AS20; Telehealth Grant Program” and should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register** (FR). Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on new collections of information in:

- Evaluating whether the new collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information associated with this rulemaking contained in 38 CFR 84.15, 84.50, 84.75, and 84.85 are described immediately following this paragraph, under its respective title.

*Title:* Telehealth Grant Program Grant Application.

*OMB Control No.:* 2900–TBD (New).

*CFR Provision:* 38 CFR 84.15.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.15 requires that applications be submitted to be evaluated and considered for a grant under new part 84. Applications require specific information so that VA can properly evaluate such applications for telehealth grants. We note that the average burden per response is the highest threshold requirement, but this estimate would be a lower time burden for lower threshold applicants.

- *Description of need for information and proposed use of information:* This collection of information is necessary to award telehealth grants to eligible entities.

- *Description of likely respondents:* Organizations that represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of telehealth grants.

- *Estimated number of respondents:* 65.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 1500 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 1625 hours.

- *\* Estimated annual cost to respondents:* \$51,155.00.

*Title:* Telehealth Grant Program Grant Renewal Application.

*OMB Control No.:* 2900–TBD (New).

*CFR Provision:* 38 CFR 84.15.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.15 requires that renewal applications be submitted to be evaluated and considered for a renewal of a grant under new part 84. Applications require specific information so that VA can properly evaluate such applications for renewal

of telehealth grants. We note that the average burden per response is the highest threshold requirement, but this estimate would be a lower time burden for lower threshold applicants.

- *Description of need for information and proposed use of information:* This collection of information is necessary to award renewal telehealth grants to grantees.

- *Description of likely respondents:* Grantees that seek renewal of their telehealth grant.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 600 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 500 hours.

- *\* Estimated annual cost to respondents:* \$15,740.00.

*Title:* Telehealth Grant Program Veterans Satisfaction Survey.

*OMB Control No.:* 2900–TBD (New).

*CFR Provision:* 38 CFR 84.50.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.50 requires grantees to conduct satisfaction surveys from veterans.

- *Description of need for information and proposed use of information:* The collection of information by VA is necessary to evaluate whether veterans are satisfied with the services provided by the grantee and the effectiveness of such services.

- *Description of likely respondents:* Veterans who receive telehealth services at telehealth access points.

- *Estimated number of respondents:* 500.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 5 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 42 hours.

- *\* Estimated annual cost to respondents:* \$1,322.16.

*Title:* Telehealth Grant Program Grantee Satisfaction Survey.

*OMB Control No.:* 2900–XXXX (New/TBD).

*CFR Provision:* 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 has been developed to capture telehealth grantee reports. As stated, VA may require grantees to provide, in any form as may be prescribed, reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the telehealth grant program and agreement.

- *Description of need for information and proposed use of information:* This collection of information is necessary to provide more effective customer service and identify areas of improvement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 20 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 17 hours.

- *\* Estimated annual cost to respondents:* \$535.16.

*Title:* Telehealth Grant Program Annual Performance Report.

*OMB Control No.:* 2900–XXXX (New/TBD).

*CFR Provision:* 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant program and agreement and to assess the provision of services under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 45 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 38 hours.

- *\* Estimated annual cost to respondents:* \$1,196.24.

*Title:* Telehealth Grant Program Other Performance Report.

*OMB Control No.:* 2900–XXXX (New/TBD).

*CFR Provision:* 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the provision of services under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* 2 times annually.

- *Estimated average burden per response:* 30 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 50 hours.

- *\* Estimated annual cost to respondents:* \$1,574.00.

*Title:* Telehealth Grant Program Annual Financial Expenditure Report.

*OMB Control No.:* 2900–XXXX (New/TBD).

*CFR Provision:* 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program. At least once per year, each grantee must submit to VA a report that describes grant agreement compliance, legal and regulatory compliance, the activities for which the telehealth grant funds were used including, but not limited to, the equipment costs, renovation expenses, attendant expenses, any other types of ongoing expenses for services provided during the year covered by the report, and any other information that VA may request.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the ongoing expenditures under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 45 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 38 hours.

- *\* Estimated annual cost to respondents:* \$1,196.24.

*Title:* Telehealth Grant Program Other Financial Expenditure Report.

*OMB Control No.:* 2900–XXXX (New/TBD).

*CFR Provision:* 38 CFR 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program. If actual telehealth grant expenditures vary from the amount disbursed to a grantee or actual telehealth grant activities vary from the grantee's program description provided in the

telehealth grant agreement, grantees must report the deviation to VA.

Reporting frequency may be on a bi-monthly, monthly, or quarterly basis. For the frequency of responses, we estimate that this reporting would be on a quarterly basis. We note that the average burden per response is the highest threshold requirement, but this estimate would be a lower time burden for lower threshold applicants.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the provision of services and the ongoing expenditures under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 50.

- *Estimated frequency of responses:* Quarterly = 4 times annually.

- *Estimated average burden per response:* 30 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 100 hours.

- *\* Estimated annual cost to respondents:* \$3148.00.

*Title:* Compliance—Program & Budget Changes.

*OMB Control No.:* 2900–XXXX (New/TBD).

*CFR Provision:* 38 CFR 84.70 and 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program. These compliance reports also include program changes and corrective action plans under 38 CFR 84.70.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the provision of services under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 10.

- *Estimated frequency of responses:* 2 times annually.

- *Estimated average burden per response:* 15 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 5 hours.

- *\* Estimated annual cost to respondents:* \$157.40.

*Title:* Compliance—Corrective Action Plan.

OMB Control No.: 2900–XXXX (New/ TBD).

CFR Provision: 38 CFR 84.70 and 84.85.

- *Summary of collection of information:* The new collection of information in 38 CFR 84.85 requires grantees to provide reports, as VA requests, to assess the provision of services under this grant program. These compliance reports also include program changes and corrective action plans under 38 CFR 84.70.

- *Description of need for information and proposed use of information:* The collection of information is necessary to determine compliance with the requirements for the telehealth grant and to assess the provision of services under this grant program and the grant agreement.

- *Description of likely respondents:* Grantees.

- *Estimated number of respondents:* 5.

- *Estimated frequency of responses:* Once annually.

- *Estimated average burden per response:* 30 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 3 hours.

- *\* Estimated annual cost to respondents:* \$94.44.

- *\* The total respondent information collection burden cost associated with this regulation is estimated to be \$76,118.64 (2,418 burden hours × \$31.48 per hour). To estimate the total information collection burden cost, VA used the 2023 Bureau of Labor Statistics (BLS) mean hourly wage for hourly wage for “all occupations” of \$31.48 per hour. This information is available at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm).*

#### Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.009, Veterans Medical Care Benefits.

#### List of Subjects

##### 38 CFR Part 17

Administrative practice and procedure, Health care, Health facilities, Mental health programs, Veterans.

##### 38 CFR Part 84

Administrative practice and procedure, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Veterans.

#### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed

this document on October 31, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

*Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR chapter I as follows:

#### PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read, in part, as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

\* \* \* \* \*

■ 2. Amend § 17.108 by revising paragraph (e)(16) to read as follows:

**§ 17.108 Copayments for inpatient hospital care and outpatient medical care.**

\* \* \* \* \*

(e) \* \* \*

(16) Telehealth visits;

\* \* \* \* \*

■ 3. Add part 84 to read as follows:

#### PART 84—TELEHEALTH GRANT PROGRAM

Sec.

84.0 Purpose.

84.5 Definitions.

84.10 Eligible entity.

84.15 Application.

84.20 Threshold requirements prior to scoring telehealth grant applicants.

84.25 Scoring criteria for the telehealth grant applicants.

84.30 Selection of applicants to receive a telehealth grant.

84.35 Scoring criteria for grantees applying for renewal of telehealth grants.

84.40 Selecting grantees for renewal of telehealth grants.

84.45 Awards for telehealth grants.

84.50 General operation requirements.

84.55 Fee prohibition.

84.60 Notice of Funding Opportunity.

84.65 Telehealth grant agreements.

84.70 Program or budget changes and Corrective Action Plans.

84.75 Faith-based organizations.

84.80 Financial management.

84.85 Telehealth grant reports.

84.90 Recordkeeping.

84.95 Technical and technological assistance.

84.100 Withholding, suspension, deobligation, termination, recovery of funds by VA, and disposition of property or equipment.

84.105 Oversight.

84.110 Telehealth grant closeout procedures.

**Authority:** 38 U.S.C. 501 and sec. 701, Pub. L. 116–171, 134 Stat. 778 (38 U.S.C. 1701 (note)).

#### § 84.0 Purpose.

The purpose of this part is to establish the telehealth grant program. The Department of Veterans Affairs (VA) will enter into agreements, and expand existing agreements, with eligible entities for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants. Through the award of these grants, grantees will offer veterans a convenient space to connect with a VA health care professional through video telehealth in comfortable private locations in communities where veterans may otherwise have long travel times to VA medical facilities, may have poor internet connectivity in their homes, or may face other barriers to accessing health care. The telehealth access point is not intended to be used by veterans who are in need of emergency health care services. This part only applies to telehealth grant agreements; however, VA may enter into an agreement for the establishment of a telehealth access point for veterans with an eligible entity that seeks to establish such an access point but does not require grant funding under this part.

#### § 84.5 Definitions.

The following definitions apply to this part and any Notice of Funding Opportunity (NOFO) issued under this part:

*Applicant* means an eligible entity that submits an application for a grant announced in a NOFO under this part.

*Date of completion* means the earliest of the following dates:

(1) The date specified in the telehealth grant agreement, or any supplement or amendment thereto; or

(2) The effective date of a telehealth grant termination under § 84.110.

*Eligible entity* means an entity that meets the requirements under § 84.10.

*Grantee* means an eligible entity that is awarded a telehealth grant under this part.

*Medically underserved* means an area that is designated under 42 U.S.C. 254b(b)(3).

*Nonprofit organization* has the meaning as given to this term in 2 CFR 200.1.

*Notice of Funding Opportunity* (NOFO) has the meaning as given to this term in 2 CFR 200.1.

*Rural and highly rural area* means an area or community that is designated as such by the Rural-Urban Commuting Areas coding system of the U.S. Department of Agriculture.

*Subcontractor* means any entity or organization that has a contract agreement to furnish services at the telehealth access point. Subcontractors do not include individuals who build the access point (e.g., entities who are hired to paint or put up walls or partitions) or provide technical services (e.g., commercial internet providers or electric services).

*Telehealth access point* means a non-VA site supported by a telehealth grant where a veteran can participate in a telehealth visit with a VA health care professional.

*Telehealth grant* means a grant awarded under this part.

#### **§ 84.10 Eligible entity.**

To be eligible to receive a telehealth grant, an entity must be:

- (a) An organization that represents or serves veterans;
- (b) A nonprofit organization;
- (c) A private business;
- (d) A State or local government; or
- (e) Other interested party.

#### **§ 84.15 Application.**

(a) *General.* An applicant must submit to VA a complete grant application package, as described in the NOFO. The NOFO may include different application requirements based on a range of funding thresholds. For example, grant applications for technology and equipment, infrastructure upgrades, and sustainment may follow different application requirements. The requirements in this section represent the most extensive requirements that applicants would need to meet.

(b) *Content of application.* The telehealth grant application package will require the following:

(1) A plan to establish, if needed, the telehealth access point (or evidence that a telehealth access point has already been established) and a description of how the size, scope, and grant management plan are feasible;

(2) Supporting documentation consisting of the following:

(i) The type of entity that is applying for the telehealth grant pursuant to § 84.10;

(ii) A proposed operating budget;

(iii) Supportive resources committed to the project, which includes, but is not limited to, space, staffing, equipment, internet services, phone services, and furniture;

(iv) The applicant's ability to control the telehealth access point and meet appropriate zoning, preservation, accessibility, safety, and environmental laws;

(v) A description of the geographic area that the telehealth access point will

serve (include the name(s) of the municipalities, counties (or parishes), or Tribal lands); and

(vi) An attestation that the facilities will be used principally to provide to veterans the services for which the project was designed;

(3) Documentation evidencing the experience of the applicant and any identified subcontractors relevant to creating an environment to provide telehealth services or organizational experience working with veterans;

(4) A statement from the applicant asserting that all of the following are true:

(i) The project will furnish veterans a telehealth access point that is private, secure, clean, accessible, and meets the requirements of this grant;

(ii) The applicant will continue to maintain and operate the telehealth access point supported by this grant until the expiration of the period during which VA could seek full recovery under § 84.100;

(iii) The title or lease to the point will lie with the applicant and the applicant will, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the applicant. Telehealth access points that are located in federally owned property (e.g., Federally Qualified Health Centers, Department of Defense, and Indian Health Services) need not be insured unless required by the terms and conditions of the Federal property award;

(iv) Adequate financial support will be available for the duration of the grant agreement that must be supported by a demonstration of financial stability and a detailed project budget, which includes, but is not limited to, all existing and anticipated sources of funds for the project; and

(v) The applicant will keep records and submit reports as VA may reasonably require, within the timeframes required, and, upon demand, allow VA access to the records upon which such information is based;

(5) Documentation of the managerial capacity of the applicant to:

(i) Maintain and operate a telehealth access point where veterans who use the telehealth access point can receive high quality telehealth care from VA health care professionals;

(ii) Continuously assess the needs of the telehealth access point and the veterans who use the telehealth access point for quality improvement in areas such as accessibility, satisfaction, and experience;

(iii) Customize the telehealth access point to meet the needs of veterans who use the telehealth access point; and

(iv) Comply with and implement the requirements of the telehealth grant; and

(6) Any additional information in writing relevant to the telehealth grant application as requested by VA.

(c) *Renewal application.* Subject to funding availability, grantees may apply for one renewal grant per fiscal year, after receiving an initial grant. The grantee must submit to VA a complete renewal application as described in the NOFO.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

#### **§ 84.20 Threshold requirements prior to scoring for the telehealth grant applicants.**

VA will only score applicants that meet the following threshold requirements:

(a) The application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 84.15(b)(6) is provided within the time frame established by VA;

(b) The application is completed in all parts;

(c) The applicant meets the eligibility criteria in § 84.10;

(d) The activities for which the telehealth grant is requested are eligible for funding under this grant under § 84.45;

(e) The veterans the applicant proposes to serve are eligible to receive telehealth services under title 38 of the United States Code;

(f) The applicant agrees to comply with the requirements of the telehealth grant;

(g) The applicant does not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and

(h) The applicant is not in default by being in non-compliance with the terms and conditions of the agreement of any previous Federal assistance.

#### **§ 84.25 Scoring criteria for the telehealth grant applicants.**

VA will score applicants who are applying for a telehealth grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score applicants who are applying for a telehealth grant:

(a) VA will award points based on the background, qualifications, experience, and past performance of the applicant and any subcontractors identified by the

applicant, if relevant, as demonstrated by the following:

(1) *Background and organizational history.* (i) Applicant's and any identified subcontractors' background and organizational history that would help them maintain and operate a telehealth access point for veterans.

(ii) Evidence that the applicant, and any identified subcontractors, maintain organizational structures with clear lines of reporting and defined responsibilities.

(iii) Applicant's, and any identified subcontractors', history of complying with agreements and not defaulting on financial obligations.

(2) *Staff qualifications.* (i) Applicant's staff, and any identified subcontractors' staff, have experience working with veterans or health care recipients.

(ii) Applicant's staff, and any identified subcontractors' staff, have organizational experience in establishing an environment suitable for providing health care services.

(3) *Organizational qualifications and past performance.* (i) Applicant, and any identified subcontractors, have experience partnering with health care organizations to create an environment to provide telehealth services.

(ii) Applicant, and any identified subcontractors, have organizational experience coordinating or administering telehealth services.

(iii) Applicant, and any identified subcontractors, have organizational experience working with veterans.

(b) VA will award points based on the applicant's plan to establish, maintain, and operate the telehealth access point, as demonstrated by the following:

(1) *Need for program.* (i) Applicant demonstrates a need for the telehealth access point in a rural, highly rural, or medically underserved area, to the extent practicable, where the telehealth access point will be located.

(ii) Applicant demonstrates an understanding of the area and provides evidence that a telehealth access point is needed to meet the unique needs of veterans and the community to be served.

(2) *Outreach plan.* Applicant has a feasible communications plan to inform veterans about the telehealth access point and the services provided.

(3) *Plan to establish the telehealth access point.* (i) Applicant's plan to establish, maintain, and operate the telehealth access point and a description of how the size, scope, and grant management plan are feasible.

(ii) Applicant's program is designed and scoped to meet the needs of veterans in their community through the provision of telehealth services. We

would consider whether the telehealth access point availability provides flexible hours of operation to maximize the telehealth access point's utilization.

(4) *Implementation timeline.* (i) Applicant's plan to establish, maintain, and operate a telehealth access point and use grant funding within the timeline specified in their application.

(ii) Applicant has a hiring plan in place to meet the applicant's implementation timeline or has existing staff to meet such timeline, if necessary.

(5) *Collaboration and communication with VA.* The applicant must submit a letter of support from a local VA medical facility or facilities confirming the need for the telehealth access point and the intent of such facility or facilities to work with the applicant if the applicant is awarded a grant.

(6) *Capacity to maintain and operate a telehealth access point.* Applicant has sufficient capacity, including staff resources, to safely maintain and operate a telehealth access point.

(7) *Sustainment plan.* The applicant has a feasible plan to sustain telehealth access point operations.

(c) VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the following:

(1) *Program evaluation.* (i) Applicant has created clear, realistic, and measurable goals that reflect the grant's aim of providing a telehealth access point to veterans against which the applicant's program performance can be evaluated.

(ii) Applicant plans to continually assess the telehealth access point to identify opportunities for quality improvement in areas such as accessibility, satisfaction, and experience.

(2) *Monitoring.* (i) Applicant has adequate controls in place to regularly monitor all aspects of the execution of the grant, including any subcontractors, for compliance with all applicable laws, regulations, and guidelines.

(ii) Applicant has a plan to provide an environment that is private, secure, clean, and complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) where veterans can participate in their telehealth appointments.

(iii) Applicant has adequate financial and operational controls in place to ensure the proper use of telehealth grant funding.

(iv) Applicant has a plan for ensuring that their staff and any subcontractors are appropriately trained on, and the telehealth access point maintains compliance with, all fire and safety

requirements as specified by State and local laws and regulations.

(3) *Remediation.* Applicant has a plan to establish a system to remediate aspects of the grant program that are non-compliant with the terms of telehealth grant agreement when they are identified.

(4) *Management and reporting.* Applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

(d) VA will award points based on the applicant's financial capability and plan, as demonstrated by the following:

(1) *Organizational finances.* Applicant, and any identified subcontractors, are financially stable.

(2) *Financial feasibility of utilizing telehealth grant funds.* (i) Applicant has a realistic budget for utilizing grant funding and will submit their implementation timeframe to operate the telehealth access point.

(ii) Applicant's program is cost-effective and can be effectively and fully implemented on-budget.

(e) VA will award points based on the applicant's area or community associations and relations, as demonstrated by the following:

(1) *Area or community associations.* Applicant has a plan for developing associations or has existing experience with Federal (including VA), State, local, and Tribal government agencies, and private entities for the purposes of providing a telehealth access point to veterans, as applicable.

(2) *Past working relationships.* Applicant (or applicant's staff), and any identified subcontractors (or subcontractors' staff), as relevant, have fostered successful working relationships and experience with public and private organizations providing services to veterans.

(3) *Local presence and knowledge.* (i) Applicant has a presence in the area or community they intend to serve; and

(ii) Applicant understands the dynamics of the area or community they intend to serve.

(4) *Integration of experience and plan to establish the telehealth access point.* Applicant's experience in the area or community they intend to serve will enhance the effectiveness of the applicant's program.

#### **§ 84.30 Selection of applicants to receive a telehealth grant.**

VA will use the following process to select applicants to receive telehealth grants:

(a) VA will score all applicants that meet the threshold requirements set forth in § 84.20 using the scoring criteria set forth in § 84.25.

(b) VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO.

(c) VA will rank those applicants who receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. The applicants will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

(d) VA will use the applicant's ranking as the primary basis for selection for funding. However, VA will prioritize entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved, to the extent practicable.

(e) Subject to paragraph (d) of this section, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. If multiple applications are received from the same geographic area, the applicants' rankings will be the primary basis for selection. If funding priorities have been established, to the extent funding is available, and still subject to paragraph (d), VA will select applicants in the next highest funding priority group based on their rank within that group.

(f) If an applicant would have been selected but for a procedural error committed by VA, VA may select that applicant for funding in the next applicable funding round or when sufficient funds otherwise become available (provided the applicant still wants to participate in the program). If there is no material change in the information, a new application would not be required.

**§ 84.35 Scoring criteria for grantees applying for renewal of telehealth grants.**

VA will score applicants who are applying for a renewal of a telehealth grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score grantees applying for renewal of a telehealth grant:

(a) VA will award points based on the success of the grantee's program, as determined by VA. Success would be measured by:

(1) Veteran satisfaction with the services provided by the grantee; and

(2) How the grantee met the telehealth grant goals and requirements for VA to deliver telehealth services to veterans at that telehealth access point in accordance with the agreement.

(b) VA will award points based on the cost-effectiveness of the grantee's program, as demonstrated by how:

(1) The hours for the point attendant correlate with the veterans' telehealth appointments; and

(2) The telehealth access point was implemented effectively using the available funding in the designated timeframe.

(c) VA will award points based on the extent to which the grantee complies with applicable laws, regulations, and guidelines for the administration of the telehealth access point.

**§ 84.40 Selecting grantees for renewal of telehealth grants.**

VA will use the following process to select grantees applying for renewal of telehealth grants:

(a) Provided the grantee continues to meet the threshold requirements set forth in § 84.20, VA will score the grantee using the scoring criteria set forth in § 84.35.

(b) VA will rank those grantees who receive at least the minimum amounts of total points and points per category set forth in the NOFO. The grantees will be ranked in order from highest to lowest scores within their respective funding priority group, if applicable.

(c) VA will use the grantee's ranking as the primary basis for selection for funding. However, VA will prioritize entities that serve veterans in rural and highly rural areas or areas determined to be medically underserved, to the extent practicable. VA will fund the highest-ranked grantees for which funding is available within their respective funding priority group, if applicable.

(d) At its discretion, VA may award any deobligated funds to an applicant or existing grantee. If VA chooses to award deobligated funds to an applicant or existing grantee, funds will be awarded as follows:

(1) VA may offer to award the deobligated funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide prompt services to the affected community. Under this section, the relevant NOFO is the most recently published NOFO which covers the geographic area that includes the affected community.

(2) If the first such applicant or grantee offered the deobligated funds refuses the funds, VA may offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the deobligated funds are awarded.

(3) VA, at its discretion, may choose to award the deobligated funds under other conditions, or may choose to not award the deobligated funds at all, when VA determines appropriate based on consideration of other relevant factors.

(e) If a grantee would have been selected but for a procedural error committed by VA, VA may select that grantee for funding in the next applicable funding round or when sufficient funds otherwise become available (provided the applicant still wants to participate in the program). If there is no material change in the information, a new application would not be required.

**§ 84.45 Awards for telehealth grants.**

(a) *Use of funds.* Telehealth grants may be used for one or more of the following:

(1) Purchasing, replacing, or upgrading hardware or software solely dedicated to the telehealth grant program necessary for the provision of secure and private telehealth services. Equipment and software must be compatible with telehealth requirements as described in the NOFO and must be purchased under warranty. Funds may be used to purchase services to configure and set up grantee-purchased equipment. VA will provide direct technical support for initial connection to a VA-secure application, and continued VA technical support for issues that may arise with the connection to the VA-secure application during the term of the grant.

(2) Upgrading security protocols for consistency with VA security requirements and digital applications, as described in the NOFO.

(3) Payment for the training of telehealth access point attendants, including payment of those attendants for completing that training, with respect to:

(i) Military and veteran cultural competence, if the entity is not an organization that represents veterans;

(ii) Equipment required to provide telehealth services;

(iii) Privacy, including the Health Insurance Portability and Accountability Act of 1996 privacy rule under 45 CFR part 160 and part 164, subparts A and E, as it relates to health care for veterans;

(iv) Scheduling for telehealth services for veterans; or

(v) Any other unique training needs for the provision of services to veterans in a telehealth access point.

(4) Upgrading existing infrastructure owned or leased by the entity to make rooms more conducive to telehealth care, including:

(i) Additions or modifications to windows or walls in an existing room, or other alterations as needed to create a new, private room, including permits or inspections required in association with space modifications;

(ii) Soundproofing of an existing room;

(iii) New electrical, telephone, or internet outlets in an existing room; or

(iv) Aesthetic enhancements to establish a more suitable therapeutic environment, including, but not limited to, seating for both the veteran and caregiver, bariatric seating, and adequate lighting.

(5) Upgrading existing infrastructure to comply with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

(6) Upgrading internet infrastructure and sustainment of internet services.

(7) Sustainment of telephone services.

(b) *Exclusions.* Telehealth grants may not be used for the purchase of new property or for major construction projects, or for the acquisition of new space through other arrangements (such as a lease agreement), as determined by VA. Major construction may consist of new construction, or activities that would increase the square footage of an existing facility (e.g., relocation of existing exterior walls, roofs, or floors). VA may further define major construction in the NOFO.

#### **§ 84.50 General operation requirements.**

(a) *Confidentiality.* Grantees must maintain the confidentiality of veterans utilizing the telehealth access point. The grantees will not keep any records on the veterans who use the telehealth access point. This prohibition only applies to veteran records, however, grantees must maintain a record of the hours the point attendant provides services to veterans.

(b) *Grantee's responsibilities.* Grantee is responsible for the operation and maintenance of the telehealth access point.

(c) *Notification to veterans.* The grantee must notify each veteran of the following:

(1) The telehealth services are being provided by VA and the grantee may not charge the veteran for use of their space.

(2) Any conditions or restrictions on the receipt of telehealth services by the veteran. The grantee has the right to prohibit services to veterans who have demonstrated disruptive behavior within their facility.

(d) *Evaluation interviews and surveys.* The grantee must participate in

telehealth program evaluation interviews and surveys.

(e) *Assessment of funds.* Grantees must regularly assess that the grant funds are utilized according to the agreement.

(f) *Administration of telehealth grants.* Grantees must ensure that telehealth grants are administered in accordance with the requirements of this part, the telehealth grant agreement, and other applicable laws and regulations. Grantees are responsible for ensuring that any subcontractors carry out activities in compliance with this program.

(g) *Use and disposition of property and/or equipment.* The grantees must follow, implement, and adhere to all requirements in the grant agreement and in 2 CFR part 200 on the use and disposition of property improved and/or equipment acquired under the telehealth grant program.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

#### **§ 84.55 Fee prohibition.**

Grantees must not charge a fee to veterans for providing VA services in telehealth access points that are funded with amounts from the telehealth grant.

#### **§ 84.60 Notice of Funding Opportunity.**

When funds are available for the telehealth grant, VA will publish a NOFO. VA has the authority to modify the duration, amount, or both of an existing telehealth grant agreement, subject to availability of funding and grantee performance, as set forth in § 84.65. The NOFO will identify:

(a) The location for obtaining the applications for the telehealth grant;

(b) The date, time, and place for submitting completed telehealth grant applications;

(c) The estimated amount and type of grant funding available;

(d) Any priorities for or exclusions from funding to meet the requirements of the telehealth grant and VA goals for providing telehealth services to veterans;

(e) The length of term for the telehealth grant award;

(f) Specific point values to be awarded for each criterion listed in §§ 84.25 and 84.35;

(g) The minimum number of total points and points per category that an applicant or grantee, as applicable, must receive for a telehealth grant to be funded;

(h) Any maximum award amounts for the telehealth grant;

(i) The timeframes and manner for payments under the telehealth grant; and

(j) Other information necessary for the telehealth grant application process as determined by VA.

#### **§ 84.65 Telehealth grant agreements.**

(a) After an applicant is selected for a telehealth grant in accordance with § 84.30, VA will draft a telehealth grant agreement to be executed by VA and the applicant. Upon execution of the telehealth grant agreement, VA will obligate grant funds to cover the amount of the approved grant, subject to the availability of funding. The telehealth grant agreement will provide that the grantee agrees, and will ensure that each subcontractor, as relevant, agrees, to:

(1) Operate the telehealth access point in accordance with the provisions of this part and the applicant's telehealth grant application;

(2) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of providing services in a telehealth access point in an effective and efficient manner; and

(3) Provide such additional information as deemed appropriate by VA.

(b) After a grantee is selected for renewal of a telehealth grant in accordance with § 84.40 VA will draft a telehealth grant agreement to be executed by VA and the grantee. Upon execution of the telehealth grant agreement, VA will obligate grant funds to cover the amount of the approved telehealth grant, subject to the availability of funding. The agreement for the renewal of the telehealth grant will contain the same provisions described in paragraph (a) of this section.

(c) No funds provided under this part may be used to replace Federal, State, Tribal, or local funds previously used, or designated for use, to establish a telehealth access point.

(d) Subject to §§ 84.60 and 84.100, the availability of funding, and grantee performance, VA may modify an existing telehealth grant agreement by one or both of the following:

(1) Extending or reducing the period for which the telehealth grant was established; and

(2) Increasing or decreasing the amount of funds awarded.

#### **§ 84.70 Program or budget changes and Corrective Action Plans.**

(a) *Change in telehealth grant agreement.* A grantee must submit to VA a written request to modify a telehealth

grant agreement for any proposed significant change that will alter the agreement. If VA approves such change, VA will issue a written amendment to the telehealth grant agreement. A grantee must receive VA's approval prior to implementing a significant change.

(1) Significant changes include, but are not limited to:

(i) A change in the grantee or any subcontractors, identified in the telehealth grant agreement;

(ii) A change in the area or community served by the grantee; or

(iii) Additions or removal of equipment, connectivity, or other services provided by the grantee; and

(iv) A change in budget line items that are more than 10 percent of the total telehealth grant award.

(2) VA's approval of changes is contingent upon the grantee's amended application retaining a high enough rank to have been competitively selected for funding in the year that the application was granted.

(3) Each telehealth grant modification request must contain a description of the revised proposed use of telehealth grant funds.

(b) *Corrective Action Plan.* VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if actual telehealth grant expenditures vary from the amount disbursed to a grantee or actual telehealth grant activities vary from the telehealth grant agreement. Reporting frequency may be on a bi-monthly, monthly, or quarterly basis.

(1) The CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action(s).

(2) After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this program.

(c) *Key personnel change.* Grantees must inform VA in writing of any key personnel changes, local or national, (e.g., new executive director, telehealth grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

#### **§ 84.75 Faith-based organizations.**

Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the telehealth grant under this part in accordance with 38 CFR part 50.

#### **§ 84.80 Financial management.**

(a) Grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) Grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

(c) Payment up to the amount specified in the telehealth grant must be made only for allowable, allocable, and reasonable costs in establishing, maintaining, and operating the telehealth access point. The determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

(d) In accordance with 2 CFR 200.414, applicants that do not have a negotiated indirect cost rate (NICRA) may:

(1) Request a de minimis rate, which is in accordance with the amounts set forth in 2 CFR 200.414(f);

(2) Apply the NICRA established with their cognizant agency; or

(3) Request to negotiate an indirect cost rate with VA.

#### **§ 84.85 Telehealth grant reports.**

(a) VA may require grantees to provide, in any form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the telehealth grant.

(b) If actual telehealth grant expenditures vary from the amount disbursed to a grantee or actual telehealth grant activities vary from the grantee's program description provided in the telehealth grant agreement, grantees must report the deviation to VA. Reporting frequency may be on a bi-monthly, monthly, or quarterly basis.

**Note 1 to paragraph (b):** For information on Corrective Action Plans, which may be required by this paragraph (b), see § 84.70.

(c) At least once per year, each grantee must submit to VA a report that describes grant agreement compliance, legal and regulatory compliance, the activities for which the telehealth grant funds were used including but not limited to, the equipment costs, renovation expenses, attendant expenses, any other types of ongoing

expenses for services provided during the year covered by the report, and any other information that VA may request.

(d) VA may request additional reports to allow VA to fully assess the provision or coordination of the provision of services under this part.

(e) All pages of the reports must cite the assigned telehealth grant number and be submitted in a timely manner as set forth in the grant agreement.

(f) Grantees agree to allow VA to post information from reports on the internet or use such information in other ways deemed appropriate by VA (including, but not limited to, activities regarding litigation). Grantees must clearly mark information that is confidential to individual veterans so that VA could exclude such information from any public use.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–TBD.)

#### **§ 84.90 Recordkeeping.**

Grantees must ensure that records are maintained for at least a 3-year period (unless a longer period is otherwise required) to document compliance with the telehealth grant. Grantees must produce such records at VA's request.

#### **§ 84.95 Technical and technological assistance.**

(a) VA will provide technical assistance, as necessary, to eligible entities to meet the requirements of this part.

(b) VA will provide technological assistance, as necessary, to ensure that the grantee's equipment is able to connect to the VA system and network as necessary to support the delivery of telehealth services.

(c) Such technical and technological assistance will be provided either directly by VA or through grants or contracts with appropriate public or nonprofit private entities.

#### **§ 84.100 Withholding, suspension, deobligation, termination, recovery of funds by VA, and disposition of property or equipment.**

(a) *General.* VA will enforce this part through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

(b) *Opportunities to object.* (1) Upon VA taking a remedy for noncompliance under paragraph (a) of this section, grantees have 30 days to object and provide information and documentation challenging the action, subject to the following conditions:

(i) Objections must be provided to VA in writing.

(ii) VA's decision stands while an objection is under consideration.

(iii) Other VA decisions (such as competing award decisions, continuation award decisions, decisions made with the consent of the grantee) are not subject to this opportunity to object.

(2) The grant agreement will provide additional requirements and responsibilities for grantees in the event of noncompliance under paragraph (a) of this section.

#### **§ 84.105 Oversight.**

VA may inspect the telehealth access points and records of any entity that has received a telehealth grant when VA deems necessary to determine compliance with this part. The authority to inspect does not authorize VA to manage or control the organization. Monitoring and oversight requirements for each grantee will be determined by a pre-award risk assessment in alignment with 2 CFR 200.206.

#### **§ 84.110 Telehealth grant closeout procedures.**

Telehealth grants will be closed out in accordance with 2 CFR part 200.

[FR Doc. 2024-25892 Filed 11-12-24; 8:45 am]

**BILLING CODE 8320-01-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 76**

[MB Docket No. 23-203; Report No. 3220; FR ID 260366]

#### **Petition for Reconsideration of Action in Rulemaking Proceeding; Correction**

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for Reconsideration; correction.

**SUMMARY:** The Federal Communications Commission corrects Dates for the filing of replies to oppositions to the Petition for Reconsideration, published in the *Federal Register* of November 1, 2024, announcing the dates for filing oppositions and replies to the Petition for Reconsideration of Action. The document contained an error in the **DATES** section.

**DATES:** November 13, 2024.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Joseph Price, Policy Division, Media Bureau, at 202-418-1423 or [Joseph.Price@fcc.gov](mailto:Joseph.Price@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

## **Correction**

In the *Federal Register* of November 1, 2024, in FR Doc. 2024-25497, on page 87322, in the third column, correct the **DATES** caption to read:**DATES:** Oppositions to the Petition must be filed on or before November 18, 2024. Replies to oppositions to the Petition must be filed on or before November 29, 2024.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2024-26213 Filed 11-12-24; 8:45 am]

**BILLING CODE 6712-01-P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 217**

[Docket No. 241104-0288]

**RIN 0648-BN12**

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Lower Columbia River Dredged Material Management Plan, Oregon and Washington**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS has received a request from the U.S. Army Corps of Engineers, for Incidental Take Regulations (ITR) and Letter of Authorization (LOA) pursuant to the Marine Mammal Protection Act. The requested regulations would govern the authorization of take of small numbers of marine mammals over 5 years (2027-2032) incidental to the Lower Columbia River Dredged Material Management Plan in Oregon and Washington. NMFS requests public comments and will consider them prior to making any final decision on the requested ITR and issuance of the LOA; agency responses to comments will be summarized in the final rule, if issued.

**DATES:** Comments and information must be received no later than December 13, 2024.

**ADDRESSES:** A plain language summary of this proposed rule is available at: <https://www.regulations.gov/docket/NOAA-NMFS-2024-0123>.

• **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

<https://www.regulations.gov> and enter NOAA-NMFS-2024-0123 in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the National Marine Fisheries Service (NMFS). All comments received are a part of the public record and will generally be posted for public viewing at: <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** A copy of the U.S. Army Corps of Engineers' (USACE) application any supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-army-corps-engineers-lower-columbia-river-dredged-material>. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

#### **Purpose and Need for Regulatory Action**

This proposed rule, if adopted, would establish a framework under the authority of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) to authorize, for a 5-year period (2027-2032), take of marine mammals incidental to the USACE's construction activities associated with the Lower Columbia River (LCR) Dredged Materials Management Plan (DMMP). NMFS received an application (the Application) from the USACE requesting 5-year regulations and an LOA to take 3 species of marine mammals. Take would occur by harassment only, incidental to impact and vibratory pile driving. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or