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-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

-HEAD-

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

-MISC1-

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2010 - Pub. L. 111-163, title VI, Sec. 602(a)(2), May 5, 2010, 124 Stat. 1173, added item 7459.

2004 - Pub. L. 108-445, Secs. 3(g), 4(a)(2), Dec. 3, 2004, 118 Stat. 2643, 2645, substituted "PAY FOR PHYSICIANS AND DENTISTS" for "SPECIAL PAY FOR PHYSICIANS AND DENTISTS" in item for subchapter III, "Pay" for "Special pay: authority" in item 7431, "Pay of Under Secretary for Health" for "Special pay: written agreements" in item 7432, "Administrative matters" for "Special pay: full-time physicians" in item 7433, struck out items 7434 "Special pay: part-time physicians", 7435 "Special pay: full-time dentists", 7436 "Special pay: part-time dentists", 7437 "Special pay: general provisions", 7438 "Special pay: coordination with other benefits laws", 7439 "Periodic review of pay of physicians and dentists; quadrennial report", and 7440 "Annual report", and added item 7456A.

1991 - Pub. L. 102-40, title I, Secs. 102, 103(a)(2), title II, Sec. 203(b), title IV, Sec. 401(b)(1), May 7, 1991, 105 Stat. 187, 199, 207, 221, added chapter heading and analysis.

-End-

-CITE-

38 USC SUBCHAPTER I - APPOINTMENTS 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
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SUBCHAPTER I - APPOINTMENTS

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38 USC Sec. 7401 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7401. Appointments in Veterans Health Administration

**-STATUTE-**

There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the Office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

(1) Physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries.

(2) Scientific and professional personnel, such as microbiologists, chemists, and biostatisticians.

(3) Audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient specialists, and such other classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department subject to the following requirements:

(A) Such other classes of health care occupations -

(i) are not occupations relating to administrative, clerical, or physical plant maintenance and protective services;

(ii) that (!1) would otherwise receive basic pay in accordance with the General Schedule under section 5332 of title 5;

(iii) provide, as determined by the Secretary, direct patient care services or services incident to direct patient services; and

(iv) would not otherwise be available to provide medical care or treatment for veterans.

(B) Not later than 45 days before the Secretary appoints any personnel for a class of health care occupations that is not specifically listed in this paragraph, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate, the Committee on Veterans' Affairs of the House of Representatives, and the Office of Management and Budget notice of such appointment.

(C) Before submitting notice under subparagraph (B), the Secretary shall solicit comments from any labor organization representing employees in such class and include such comments in such notice.

**-SOURCE-**

(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108-170, title III, Secs. 301(a)(1), 302(a), Dec. 6, 2003, 117 Stat. 2054, 2057; Pub. L. 108-422, title V, Sec. 502, Nov. 30, 2004, 118 Stat. 2396; Pub. L. 109-

461, title II, Sec. 201(a), Dec. 22, 2006, 120 Stat. 3409; Pub. L. 111-163, title VI, Sec. 601(a), May 5, 2010, 124 Stat. 1167.)

-MISC1-

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4104 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2010 - Par. (3). Pub. L. 111-163 inserted "nurse assistants," after "licensed practical or vocational nurses," substituted "blind rehabilitation outpatient specialists, and such other classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department subject to the following requirements:" for "and blind rehabilitation outpatient specialists.", and added subpars. (A) to (C).

2006 - Par. (3). Pub. L. 109-461 inserted "marriage and family therapists, licensed professional mental health counselors," after "social workers,".

2004 - Par. (3). Pub. L. 108-422 substituted "technologists, dental hygienists, dental assistants" for "and dental technologists" and "technologists, therapeutic radiologic technologists, social workers, blind rehabilitation specialists, and blind rehabilitation outpatient specialists" for "technicians, therapeutic radiologic technicians, and social workers".

2003 - Pub. L. 108-170, Sec. 302(a)(1), substituted "health" for "medical" in introductory provisions.

Par. (1). Pub. L. 108-170, Sec. 302(a)(2), inserted "chiropractors," after "podiatrists,".

Par. (2). Pub. L. 108-170, Sec. 301(a)(1)(A), added par. (2) and struck out former par. (2) which read as follows: "Psychologists (other than those described in paragraph (3)), dietitians, and other scientific and professional personnel, such as microbiologists, chemists, biostatisticians, and medical and dental technologists."

Par. (3). Pub. L. 108-170, Sec. 301(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: "Clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Secretary, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists."

1992 - Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(a) of Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

#### PRIOR APPOINTMENTS OF CERTAIN PERSONNEL

Pub. L. 108-170, title III, Sec. 301(a)(2), Dec. 6, 2003, 117 Stat. 2055, provided that: "Personnel appointed to the Veterans Health Administration before the date of the enactment of this Act [Dec. 6, 2003] who are in an occupational category of employees specified in paragraph (3) of section 7401 of title 38, United

States Code, by reason of the amendment made by paragraph (1)(B) of this subsection [amending this section] shall, as of such date, be deemed to have been appointed to the Administration under such paragraph (3)."

-FOOTNOTE-

(1) So in original. The word "that" probably should not appear.

-End-

-CITE-

38 USC Sec. 7402

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7402. Qualifications of appointees

-STATUTE-

(a) To be eligible for appointment to the positions in the Administration covered by subsection (b), a person must have the applicable qualifications set forth in that subsection.

(b)(1) Physician. - To be eligible to be appointed to a physician position, a person must -

(A) hold the degree of doctor of medicine or of doctor of osteopathy from a college or university approved by the Secretary,

(B) have completed an internship satisfactory to the Secretary, and

(C) be licensed to practice medicine, surgery, or osteopathy in a State.

(2) Dentist. - To be eligible to be appointed to a dentist position, a person must -

(A) hold the degree of doctor of dental surgery or dental medicine from a college or university approved by the Secretary, and

(B) be licensed to practice dentistry in a State.

(3) Nurse. - To be eligible to be appointed to a nurse position, a person must -

(A) have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, and

(B) be registered as a graduate nurse in a State.

(4) Director of a Hospital, Domiciliary, Center, or Outpatient Clinic. - To be eligible to be appointed to a director position, a person must have such business and administrative experience and qualifications as the Secretary shall prescribe.

(5) Podiatrist. - To be eligible to be appointed to a podiatrist position, a person must -

(A) hold the degree of doctor of podiatric medicine, or its equivalent, from a school of podiatric medicine approved by the Secretary, and

(B) be licensed to practice podiatry in a State.

(6) Optometrist. - To be eligible to be appointed to an optometrist position, a person must -

- (A) hold the degree of doctor of optometry, or its equivalent, from a school of optometry approved by the Secretary, and
- (B) be licensed to practice optometry in a State.

(7) Pharmacist. - To be eligible to be appointed to a pharmacist position, a person must -

- (A) hold the degree of bachelor of science in pharmacy, or its equivalent, from a school of pharmacy, approved by the Secretary, and
- (B) be registered as a pharmacist in a State.

(8) Psychologist. - To be eligible to be appointed to a psychologist position, a person must -

- (A) hold a doctoral degree in psychology from a college or university approved by the Secretary,
- (B) have completed study for such degree in a specialty area of psychology and an internship which are satisfactory to the Secretary, and
- (C) be licensed or certified as a psychologist in a State, except that the Secretary may waive the requirement of licensure or certification for an individual psychologist for a period not to exceed two years on the condition that that psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified.

(9) Social Worker. - To be eligible to be appointed to a social worker position, a person must -

- (A) hold a master's degree in social work from a college or university approved by the Secretary; and
- (B) be licensed or certified to independently practice social work in a State, except that the Secretary may waive the requirement of licensure or certification for an individual social worker for a reasonable period of time recommended by the Under Secretary for Health.

(10) Marriage and Family Therapist. - To be eligible to be appointed to a marriage and family therapist position, a person must -

- (A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and
- (B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.

(11) Licensed Professional Mental Health Counselor. - To be eligible to be appointed to a licensed professional mental health counselor position, a person must -

- (A) hold a master's degree in mental health counseling, or a related field, from a college or university approved by the Secretary; and
- (B) be licensed or certified to independently practice mental health counseling.

(12) Chiropractor. - To be eligible to be appointed to a

chiropractor position, a person must -

(A) hold the degree of doctor of chiropractic, or its equivalent, from a college of chiropractic approved by the Secretary; and

(B) be licensed to practice chiropractic in a State.

(13) Peer Specialist. - To be eligible to be appointed to a peer specialist position, a person must -

(A) be a veteran who has recovered or is recovering from a mental health condition; and

(B) be certified by -

(i) a not-for-profit entity engaged in peer specialist training as having met such criteria as the Secretary shall establish for a peer specialist position; or

(ii) a State as having satisfied relevant State requirements for a peer specialist position.

(14) Other Health-Care Positions. - To be appointed as a physician assistant, expanded-function dental auxiliary, certified or registered respiratory therapist, licensed physical therapist, licensed practical or vocational nurse, occupational therapist, dietitian, microbiologist, chemist, biostatistician, medical technologist, dental technologist, or other position, a person must have such medical, dental, scientific, or technical qualifications as the Secretary shall prescribe.

(c) Except as provided in section 7407(a) of this title, a person may not be appointed in the Administration to a position listed in section 7401(1) of this title unless the person is a citizen of the United States.

(d) A person may not be appointed under section 7401(1) of this title to serve in the Administration in any direct patient-care capacity unless the Under Secretary for Health determines that the person possesses such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable the person to carry out the person's health-care responsibilities satisfactorily. Any determination by the Under Secretary for Health under this subsection shall be in accordance with regulations which the Secretary shall prescribe.

(e) A person may not serve as Chief of Staff of a Department health-care facility if the person is not serving on a full-time basis.

(f) A person may not be employed in a position under subsection (b) (other than under paragraph (4) of that subsection) if -

(1) the person is or has been licensed, registered, or certified (as applicable to such position) in more than one State; and

(2) either -

(A) any of those States has terminated such license, registration, or certification for cause; or

(B) the person has voluntarily relinquished such license, registration, or certification in any of those States after being notified in writing by that State of potential termination for cause.

(g) The Secretary may enter into contracts with not-for-profit entities to provide -

(1) peer specialist training to veterans; and

(2) certification for veterans under subsection (b)(13)(B)(i).



(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102-86, title III, Sec. 305(a), Aug. 14, 1991, 105 Stat. 417; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106-117, title II, Sec. 209, Nov. 30, 1999, 113 Stat. 1569; Pub. L. 106-419, title II, Sec. 205, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108-170, title III, Sec. 302(b), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 109-461, title II, Sec. 201(b), Dec. 22, 2006, 120 Stat. 3409; Pub. L. 110-387, title IV, Sec. 405, Oct. 10, 2008, 122 Stat. 4129.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4105 and 4108(b) of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2008 - Subsec. (b)(11). Pub. L. 110-387, Sec. 405(a)(1), redesignated par. (11) relating to other health care positions as (14).

Subsec. (b)(13). Pub. L. 110-387, Sec. 405(a)(2), added par. (13).

Subsec. (b)(14). Pub. L. 110-387, Sec. 405(a)(1), redesignated par. (11) relating to other health care positions as (14).

Subsec. (g). Pub. L. 110-387, Sec. 405(b), added subsec. (g).

2006 - Subsec. (b)(10) to (12). Pub. L. 109-461 added par. (10) and the par. (11) relating to licensed professional health counselor and redesignated former par. (10) as (12).

2003 - Subsec. (b)(10), (11). Pub. L. 108-170 added par. (10) and redesignated former par. (10) as (11).

2000 - Subsec. (b)(9). Pub. L. 106-419 substituted "a person must - " and subpars. (A) and (B) for "a person must hold a master's degree in social work from a college or university approved by the Secretary and satisfy the social worker licensure, certification, or registration requirements, if any, of the State in which the social worker is to be employed, except that the Secretary may waive the licensure, certification, or registration requirement of this paragraph for an individual social worker for a reasonable period, not to exceed 3 years, in order for the social worker to take any actions necessary to satisfy the licensure, certification, or registration requirements of such State."

1999 - Subsec. (f). Pub. L. 106-117 added subsec. (f).

1992 - Subsec. (d). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

1991 - Subsec. (b)(9), (10). Pub. L. 102-86 added par. (9) and redesignated former par. (9) as (10).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 305(b) of Pub. L. 102-86 provided that: "The amendment made by subsection (a) [amending this section] does not apply to any person employed as a social worker by the Department of Veterans Affairs on or before the date of the enactment of this Act [Aug. 14, 1991]."

REQUIREMENTS RESPECTING BASIC PROFICIENCY IN SPOKEN AND WRITTEN  
ENGLISH OF APPOINTEES AFTER NOVEMBER 23, 1977

Section 4(a)(3) of Pub. L. 95-201 provided that: "Notwithstanding any other provision of law, with respect to persons other than those described in subsection (c) of section 4105 and subsection (f) of section 4114 of title 38, United States Code [former sections 4105(c) and 4114(f) of this title, see subsec. (d) of this section and section 7407(d) of this title] (as added by paragraphs (1) and (2) of this subsection), who are appointed after the date of enactment of this Act [Nov. 23, 1977] in the Department of Medicine and Surgery in the Veterans' Administration [now Veterans Health Administration of the Department of Veterans Affairs] in any direct patient-care capacity, and with respect to persons described in such subsections who are appointed after such enactment date and prior to January 1, 1978, the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs], upon the recommendation of the Chief Medical Director [now Under Secretary for Health], shall take appropriate steps to provide reasonable assurance that such persons possess such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable such persons to carry out their health-care responsibilities satisfactorily."

-End-

-CITE-

38 USC Sec. 7403

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7403. Period of appointments; promotions

-STATUTE-

(a)(1) Appointments under this chapter of health-care professionals to whom this section applies may be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Secretary, without regard to civil-service requirements.

(2) This section applies to the following persons appointed under this chapter:

- (A) Physicians.
- (B) Dentists.
- (C) Podiatrists.
- (D) Optometrists.
- (E) Nurses.
- (F) Physician assistants.
- (G) Expanded-function dental auxiliaries.
- (H) Chiropractors.

(b)(1) Except as otherwise provided in this subsection, appointments described in subsection (a) shall be for a probationary period of two years.

(2) With respect to the appointment of a registered nurse under this chapter, paragraph (1) shall apply with respect to such

appointment regardless of whether such appointment is on a full-time basis or a part-time basis.

(3) An appointment described in subsection (a) on a part-time basis of a person who has previously served on a full-time basis for the probationary period for the position concerned shall be without a probationary period.

(4) The record of each person serving under such an appointment in the Medical, Dental, and Nursing Services shall be reviewed from time to time by a board, appointed in accordance with regulations of the Secretary. If such a board finds that such person is not fully qualified and satisfactory, such person shall be separated from the service.

(c) Promotions of persons to whom this section applies shall be made only after examination given in accordance with regulations prescribed by the Secretary. Advancement within grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Secretary.

(d) In determining eligibility for reinstatement in the Federal civil service of persons appointed to positions in the Administration under this chapter who at the time of appointment have a civil-service status, and whose employment in the Administration is terminated, the period of service performed in the Administration shall be included in computing the period of service under applicable civil-service rules and regulations.

(e) In accordance with regulations prescribed by the Secretary, the grade and annual rate of basic pay of a person to whom this section applies whose level of assignment is changed from a level of assignment in which the grade level is based on both the nature of the assignment and personal qualifications may be adjusted to the grade and annual rate of basic pay otherwise appropriate.

(f)(1) Upon the recommendation of the Under Secretary for Health, the Secretary may -

(A) use the authority in subsection (a) to establish the qualifications for and (subject to paragraph (2)) to appoint individuals to positions listed in section 7401(3) of this title; and

(B) use the authority provided in subsection (c) for the promotion and advancement of Department employees serving in such positions.

(2) In using such authority to appoint individuals to such positions, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(3) Notwithstanding any other provision of this title or other law, all matters relating to adverse actions, reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees, disciplinary actions, and grievance procedures involving individuals appointed to such positions, whether appointed under this section or section 7405(a)(1)(B) of this title (including similar actions and procedures involving an employee in a probationary status), shall be resolved under the provisions of title 5 as though such individuals had been appointed under that title.

(g)(1) The Secretary may appoint in the competitive civil service without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title) an individual who -

(A) has a recognized degree or certificate from an accredited institution in a health-care profession or occupation; and

(B) has successfully completed a clinical education program

affiliated with the Department.

(2) In using the authority provided by this subsection, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(h)(1) If the Secretary uses the authority provided in subsection (c) for the promotion and advancement of an occupational category of employees described in section 7401(3) of this title, as authorized by subsection (f)(1)(B), the Secretary shall do so through one or more systems prescribed by the Secretary. Each such system shall be planned, developed, and implemented in collaboration with, and with the participation of, exclusive employee representatives of such occupational category of employees.

(2)(A) Before prescribing a system of promotion and advancement of an occupational category of employees under paragraph (1), the Secretary shall provide to exclusive employee representatives of such occupational category of employees a written description of the proposed system.

(B) Not later than 30 days after receipt of the description of a proposed system under subparagraph (A), exclusive employee representatives may submit to the Secretary the recommendations, if any, of such exclusive employee representatives with respect to the proposed system.

(C) The Secretary shall give full and fair consideration to any recommendations received under subparagraph (B) in deciding whether and how to proceed with a proposed system.

(3) The Secretary shall implement immediately any part of a system of promotion and advancement under paragraph (1) that is proposed under paragraph (2) for which the Secretary receives no recommendations from exclusive employee representatives under paragraph (2).

(4) If the Secretary receives recommendations under paragraph (2) from exclusive employee representatives on any part of a proposed system of promotion and advancement under that paragraph, the Secretary shall determine whether or not to accept the recommendations, either in whole or in part. If the Secretary determines not to accept all or part of the recommendations, the Secretary shall -

(A) notify the congressional veterans' affairs committees of the recommendations and of the portion of the recommendations that the Secretary has determined not to accept;

(B) meet and confer with such exclusive employee representatives, for a period not less than 30 days, for purposes of attempting to reach an agreement on whether and how to proceed with the portion of the recommendations that the Secretary has determined not to accept;

(C) at the election of the Secretary, or of a majority of such exclusive employee representatives who are participating in negotiations on such matter, employ the services of the Federal Mediation and Conciliation Service during the period referred to in subparagraph (B) for purposes of reaching such agreement; and

(D) if the Secretary determines that activities under subparagraph (B), (C), or both are unsuccessful at reaching such agreement and determines (in the sole and unreviewable discretion of the Secretary) that further meeting and conferral under subparagraph (B), mediation under subparagraph (C), or both are unlikely to reach such agreement -

(i) notify the congressional veterans' affairs committees of such determinations, identify for such committees the portions

of the recommendations that the Secretary has determined not to accept, and provide such committees an explanation and justification for determining to implement the part of the system subject to such portions of the recommendations without regard to such portions of the recommendations; and

(ii) commencing not earlier than 30 days after notice under clause (i), implement the part of the system subject to the recommendations that the Secretary has determined not to accept without regard to those recommendations.

(5) If the Secretary and exclusive employee representatives reach an agreement under paragraph (4) providing for the resolution of a disagreement on one or more portions of the recommendations that the Secretary had determined not to accept under that paragraph, the Secretary shall immediately implement such resolution.

(6) In implementing a system of promotion and advancement under this subsection, the Secretary shall -

(A) develop and implement mechanisms to permit exclusive employee representatives to participate in the periodic review and evaluation of the system, including peer review, and in any further planning or development required with respect to the system as a result of such review and evaluation; and

(B) provide exclusive employee representatives appropriate access to information to ensure that the participation of such exclusive employee representative in activities under subparagraph (A) is productive.

(7)(A) The Secretary may from time to time modify a system of promotion and advancement under this subsection.

(B) In modifying a system, the Secretary shall take into account any recommendations made by the exclusive employee representatives concerned.

(C) In modifying a system, the Secretary shall comply with paragraphs (2) through (5) and shall treat any proposal for the modification of a system as a proposal for a system for purposes of such paragraphs.

(D) The Secretary shall promptly submit to the congressional veterans' affairs committees a report on any modification of a system. Each report shall include -

(i) an explanation and justification of the modification; and  
(ii) a description of any recommendations of exclusive employee representatives with respect to the modification and a statement whether or not the modification was revised in light of such recommendations.

(8) In the case of employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary may develop procedures for input from representatives under this subsection from any appropriate organization that represents a substantial percentage of such employees or, if none, in such other manner as the Secretary considers appropriate, consistent with the purposes of this subsection.

(9) In this subsection, the term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

**-SOURCE-**

(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 224; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108-170, title III, Secs. 301(b),

302(c), Dec. 6, 2003, 117 Stat. 2055, 2058; Pub. L. 111-163, title VI, Sec. 601(b), May 5, 2010, 124 Stat. 1168.)

-MISC1-

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4106 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

2010 - Subsec. (b)(1). Pub. L. 111-163, Sec. 601(b)(1), substituted "Except as otherwise provided in this subsection, appointments" for "Appointments".

Subsec. (b)(2) to (4). Pub. L. 111-163, Sec. 601(b)(2), (3), added pars. (2) and (3) and redesignated former par. (2) as (4).

2003 - Subsec. (a)(2)(H). Pub. L. 108-170, Sec. 302(c), added subpar. (H).

Subsec. (f)(3). Pub. L. 108-170, Sec. 301(b)(1), inserted "reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees," after "adverse actions," ", whether appointed under this section or section 7405(a)(1)(B) of this title" after "such positions", and comma after "status".

Subsec. (h). Pub. L. 108-170, Sec. 301(b)(2), added subsec. (h).

1992 - Subsec. (f)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(c) of Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

-End-

-CITE-

38 USC Sec. 7404

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7404. Grades and pay scales

-STATUTE-

(a)(1) The annual rates or ranges of rates of basic pay for positions provided in section 7306 of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law.

(2) The pay of physicians and dentists serving in positions to which an Executive order applies under paragraph (1) shall be determined under subchapter III of this chapter instead of such Executive order.

(3)(A) The rate of basic pay for a position to which an Executive

order applies under paragraph (1) and is not described by paragraph (2) shall be set in accordance with section 5382 of title 5 as if such position were a Senior Executive Service position (as such term is defined in section 3132(a) of title 5).

(B) A rate of basic pay for a position may not be set under subparagraph (A) in excess of -

(i) in the case the position is not described in clause (ii), the rate of basic pay payable for level III of the Executive Schedule; or

(ii) in the case that the position is covered by a performance appraisal system that meets the certification criteria established by regulation under section 5307(d) of title 5, the rate of basic pay payable for level II of the Executive Schedule.

(C) Notwithstanding the provisions of subsection (d) of section 5307 of title 5, the Secretary may make any certification under that subsection instead of the Office of Personnel Management and without concurrence of the Office of Management and Budget.

(b) The grades for positions provided for in paragraph (1) of section 7401 of this title shall be as follows. The annual ranges of rates of basic pay for those grades shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law:

#### PHYSICIAN AND DENTIST SCHEDULE

Physician grade.

Dentist grade.

#### NURSE SCHEDULE

Nurse V.

Nurse IV.

Nurse III.

Nurse II.

Nurse I.

#### CLINICAL PODIATRIST, CHIROPRACTOR, AND OPTOMETRIST SCHEDULE

Chief grade.

Senior grade.

Intermediate grade.

Full grade.

Associate grade.

(c) Notwithstanding the provisions of section 7425(a) of this title, a person appointed under section 7306 of this title who is not eligible for pay under subchapter III shall be deemed to be a career appointee for the purposes of sections 4507 and 5384 of title 5.

(d) Except as provided under subsection (e), subchapter III, and section 7457 of this title, pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.

(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate determined by the Secretary, not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5.

#### -SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 225; amended Pub. L. 102-405, title II, Sec. 206, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102-585, title III, Sec. 301(a), Nov. 4, 1992, 106 Stat. 4951; Pub. L. 108-170, title III, Sec. 302(d), Dec. 6, 2003, 117 Stat. 2058; Pub. L.

108-445, Sec. 3(a), (f), Dec. 3, 2004, 118 Stat. 2636, 2643; Pub. L. 109-461, title II, Sec. 202, Dec. 22, 2006, 120 Stat. 3410; Pub. L. 111-163, title VI, Sec. 601(d)(1), May 5, 2010, 124 Stat. 1169.)

-REFTEXT-

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(3)(B)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

Level II of the Executive Schedule, referred to in subsec. (a)(3)(B)(ii), is set out in section 5313 of Title 5, Government Organization and Employees.

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(a)-(d) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010 - Subsec. (a). Pub. L. 111-163 designated first sentence as par. (1) and second sentence as par. (2), substituted "under paragraph (1)" for "under the preceding sentence" in par. (2), and added par. (3).

2006 - Subsec. (d). Pub. L. 109-461, Sec. 202(1), substituted "subsection (e), subchapter III, and" for "subchapter III and in".

Subsec. (e). Pub. L. 109-461, Sec. 202(2), added subsec. (e).

2004 - Subsec. (a). Pub. L. 108-445, Sec. 3(a)(2), inserted at end "The pay of physicians and dentists serving in positions to which an Executive order applies under the preceding sentence shall be determined under subchapter III of this chapter instead of such Executive order."

Subsec. (b). Pub. L. 108-445, Sec. 3(a)(1), struck out "(1)" after "(b)", inserted items relating to Physician grade and Dentist grade under heading "physician and dentist schedule" and struck out former items under that heading, which read "Director grade", "Executive grade", "Chief grade", "Senior grade", "Intermediate grade", "Full grade", and "Associate grade", and struck out par. (2). Prior to amendment, par. (2) read as follows: "A person may not hold the director grade in the Physician and Dentist Schedule unless the person is serving as a director of a hospital, domiciliary, center, or outpatient clinic (independent), or comparable position. A person may not hold the executive grade in that Schedule unless the person holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position."

Subsec. (c). Pub. L. 108-445, Sec. 3(f)(1), substituted "pay" for "special pay".

Subsec. (d). Pub. L. 108-445, Sec. 3(f)(2), substituted "pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule." for "pay may not be paid at a rate in excess of the rate of basic pay for an appropriate level authorized by section 5315 or 5316 of title 5 for positions in the Executive Schedule, as follows:

"(1) Level IV for the Deputy Under Secretary for Health.

"(2) Level V for all other positions for which such basic pay is paid under this section."



2003 - Subsec. (b)(1). Pub. L. 108-170 substituted "clinical podiatrist, chiropractor, and optometrist schedule" for "clinical podiatrist and optometrist schedule" as third center heading in table.

1992 - Subsec. (b)(1). Pub. L. 102-585 inserted items relating to Nurse V through I under heading "nurse schedule" and struck out former items under that heading, "Director grade", "Senior grade", "Intermediate grade", and "Entry grade".

Subsec. (b)(2). Pub. L. 102-405, Sec. 206, inserted ", or comparable position" before period at end of first sentence.

Subsec. (d)(1). Pub. L. 102-405, Sec. 302(c)(1), substituted "Under Secretary for Health" for "Chief Medical Director".

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-163, title VI, Sec. 601(d)(2), May 5, 2010, 124 Stat. 1169, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect on the first day of the first pay period beginning after the day that is 180 days after the date of the enactment of this Act [May 5, 2010]."

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 308 of Pub. L. 102-585 provided that: "The amendments made by sections 301, 302, 303, and 304 [amending this section and sections 7451 and 7452 of this title] shall take effect with respect to the first pay period beginning on or after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 4, 1992]."

-EXEC-

#### ADJUSTMENT OF PAY RATES

For adjustment of pay rates under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of Title 5, Government Organization and Employees.

#### EXECUTIVE ORDER NO. 12438

Ex. Ord. No. 12438, Aug. 23, 1983, 48 F.R. 39205, which related to review of increases in rates of basic pay for employees of the Veterans' Administration, was revoked by Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, set out as a note under section 7455 of this title.

-End-

-CITE-

38 USC Sec. 7405

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7405. Temporary full-time appointments, part-time appointments, and without-compensation appointments

-STATUTE-

(a) The Secretary, upon the recommendation of the Under Secretary for Health, may employ, without regard to civil service or classification laws, rules, or regulations, personnel as follows:

(1) On a temporary full-time basis, part-time basis, or without compensation basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Librarians.

(D) Other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs).

(2) On a fee basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Other professional and technical personnel.

(b) Personnel employed under subsection (a) -

(1) shall be in addition to personnel described in section 7306, paragraphs (1) and (3) of section 7401, and section 7408 of this title; and

(2) shall be paid such rates of pay as the Secretary may prescribe.

(c)(1) Temporary full-time appointments under this section of persons in positions listed in paragraphs (1) and (3) of section 7401 of this title may be for a period in excess of 90 days only if the Under Secretary for Health finds that circumstances render it impracticable to obtain the necessary services through appointments under that section.

(2) A temporary full-time appointment may not be made for a period in excess of two years in the case of a person who -

(A) has successfully completed -

(i) a full course of nursing in a recognized school of nursing, approved by the Secretary; or

(ii) a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title, or as a physician assistant, in a recognized education or training institution approved by the Secretary; and

(B) is pending registration or licensure in a State or certification by a national board recognized by the Secretary.

(3)(A) Temporary full-time appointments of persons in positions referred to in subsection (a)(1)(D) shall not exceed three years.

(B) Temporary full-time appointments under this paragraph may be renewed for one or more additional periods not in excess of three years each.

(4) Temporary full-time appointments of other personnel may not be for a period in excess of one year except as authorized in subsection (f).

(d) A part-time appointment may not be for a period of more than one year, except for appointments of persons specified in subsection (a)(1)(A) and interns, residents, and other trainees in medical support programs and except as authorized in subsection (f).

(e) A student who has a temporary appointment under this section and who is pursuing a full course of nursing in a recognized school of nursing approved by the Secretary, or who is pursuing a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, may be reappointed for a period not to exceed the duration of the student's academic program.

(f) During any period during which the Secretary is exercising the authority provided in subsections (a) and (f)(1) of section 7403 of this title in connection with the appointment, under paragraph (3) of section 7401 of this title, of personnel in a category of personnel described in such paragraph -

(1) the Secretary may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Under Secretary for Health finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 7401 of this title; and

(2) part-time appointments of personnel in such category may be for periods of more than one year.

(g)(1) Except as provided in paragraph (3), employment of a registered nurse on a temporary part-time basis under subsection (a)(1) shall be for a probationary period of two years.

(2) Except as provided in paragraph (3), upon completion by a registered nurse of the probationary period described in paragraph

(1) -

(A) the employment of such nurse shall -

(i) no longer be considered temporary; and

(ii) be considered an appointment described in section 7403(a) of this title; and

(B) the nurse shall be considered to have served the probationary period required by section 7403(b).

(3) This subsection shall not apply to appointments made on a term limited basis of less than or equal to three years of -

(A) nurses with a part-time appointment resulting from an academic affiliation or teaching position in a nursing academy of the Department;

(B) nurses appointed as a result of a specific research proposal or grant; or

(C) nurses who are not citizens of the United States and appointed under section 7407(a) of this title.

#### -SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 226; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106-419, title II, Sec. 204, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108-170, title III, Sec. 301(c), Dec. 6, 2003, 117 Stat. 2057; Pub. L. 111-163, title VI, Sec. 601(c), May 5, 2010, 124 Stat. 1168.)

#### -MISC1-

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(a) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

## AMENDMENTS

2010 - Subsec. (g). Pub. L. 111-163 added subsec. (g).

2003 - Subsec. (a)(1)(B), (C). Pub. L. 108-170, Sec. 301(c)(1)(A), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

"(B) Certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.

"(C) Dietitians, social workers, and librarians."

Subsec. (a)(2)(B). Pub. L. 108-170, Sec. 301(c)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: "Certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists."

Subsec. (c)(1). Pub. L. 108-170, Sec. 301(c)(2), substituted "paragraphs (1) and (3) of section 7401" for "section 7401(1)".

2000 - Subsec. (c)(2). Pub. L. 106-419, Sec. 204(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, or who have successfully completed a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, and who are pending registration or licensure in a State, or certification by a national board recognized by the Secretary, shall not exceed two years."

Subsec. (c)(3), (4). Pub. L. 106-419, Sec. 204(b), added par. (3) and redesignated former par. (3) as (4).

1992 - Subsecs. (a), (c)(1), (f)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

-End-

-CITE-

38 USC Sec. 7406

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7406. Residencies and internships

-STATUTE-

(a)(1) The Secretary may establish residencies and internships. The Secretary may appoint qualified persons to such positions without regard to civil service or classification laws, rules, or regulations.

(2) For the purposes of this section:

(A) The term "internship" includes the equivalency of an internship as determined in accordance with regulations which the Secretary shall prescribe.

(B) The term "intern" means a person serving an internship.

(b) The Secretary may prescribe the conditions of employment of persons appointed under this section, including necessary training,

and the customary amount and terms of pay for such positions during the period of such employment and training. The amount and terms of such pay may be established retroactively based on changes in such customary amount and terms.

(c)(1) In order to carry out more efficiently the provisions of subsection (a)(1), the Secretary may contract with one or more hospitals, medical schools, or medical installations having hospital facilities and participating with the Department in the training of interns or residents to provide, by the designation of one such institution to serve as a central administrative agency, for the central administration -

- (A) of stipend payments;
- (B) provision of fringe benefits; and
- (C) maintenance of records for such interns and residents.

(2) The Secretary may pay to such designated agency, without regard to any other law or regulation governing the expenditure of Government moneys either in advance or in arrears, an amount to cover the cost for the period such intern or resident serves in a Department facility furnishing hospital care or medical services of

- 
- (A) stipends fixed by the Secretary pursuant to paragraph (1);
- (B) hospitalization, medical care, and life insurance and any other employee benefits as are agreed upon by the participating institutions for the period that such intern or resident serves in a Department facility furnishing hospital care or medical services;
- (C) tax on employers pursuant to chapter 21 of the Internal Revenue Code of 1986, where applicable; and
- (D) an amount to cover a pro rata share of the cost of expense of such central administrative agency.

(3)(A) Any amounts paid by the Secretary to such central administrative agency to cover the cost of hospitalization, medical care, or life insurance or other employee benefits shall be in lieu of any benefits of like nature to which such intern or resident may be entitled under the provisions of title 5, and the acceptance of stipends and employee benefits from the designated central administrative agency shall constitute a waiver by the recipient of any claim such recipient might have to any payment of stipends or employee benefits to which such recipient may be entitled under this title or title 5.

(B) Notwithstanding subparagraph (A), any period of service of any such intern or resident in a Department facility furnishing hospital care or medical services shall be deemed creditable service for the purposes of section 8332 of title 5.

(4) The agreement with such central administrative agency may further provide that the designated central administrative agency shall -

- (A) make all appropriate deductions from the stipend of each intern and resident for local, State, and Federal taxes;
- (B) maintain all records pertinent to such deductions and make proper deposits of such deductions; and
- (C) maintain all records pertinent to the leave accrued by such intern and resident for the period during which such recipient serves in a participating facility, including a Department facility furnishing hospital care or medical services.

(5) Leave described in paragraph (4)(C) may be pooled, and the intern or resident may be afforded leave by the facility in which such person is serving at the time the leave is to be used to the

extent of such person's total accumulated leave, whether or not earned at the facility in which such person is serving at the time the leave is to be afforded.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 227; amended Pub. L. 104-262, title III, Sec. 345, Oct. 9, 1996, 110 Stat. 3208.)

-REFTEXT-

REFERENCES IN TEXT

Chapter 21 of the Internal Revenue Code of 1986, referred to in subsec. (c)(2)(C), is classified to chapter 21 (Sec. 3101 et seq.) of Title 26, Internal Revenue Code.

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(b) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1996 - Subsec. (c)(2), (3)(B). Pub. L. 104-262, Sec. 345(1), substituted "Department facility furnishing hospital care or medical services" for "Department hospital" wherever appearing.

Subsec. (c)(4)(C). Pub. L. 104-262, Sec. 345(2), substituted "participating facility" for "participating hospital".

Pub. L. 104-262, Sec. 345(1), substituted "Department facility furnishing hospital care or medical services" for "Department hospital".

Subsec. (c)(5). Pub. L. 104-262, Sec. 345(3), substituted "facility" for "hospital" in two places.

-End-

-CITE-

38 USC Sec. 7407

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7407. Administrative provisions for section 7405 and 7406 appointments

-STATUTE-

(a) When the Under Secretary for Health determines that it is not possible to recruit qualified citizens for the necessary services, appointments under sections 7405 and 7406 of this title may be made without regard to the citizenship requirements of section 7402(c) of this title or of any other law prohibiting the employment of, or payment of compensation to, a person who is not a citizen of the United States.

(b)(1) Subject to paragraph (2), the Under Secretary for Health

may waive for the purpose of the appointment of an individual under section 7405 or 7406 of this title the requirements set forth in section 7402(b) of this title -

(A) that a physician, dentist, psychologist, optometrist, registered nurse, practical or vocational nurse, or physical therapist be licensed or certified, as appropriate;

(B) that the licensure or certification of such an individual be in a State; and

(C) that a psychologist have completed an internship.

(2) The waivers authorized in paragraph (1) may be granted -

(A) in the case of clauses (A) and (C) of such paragraph, if the individual (i) will be employed to conduct research or serve in an academic position, and (ii) will have no responsibility for furnishing direct patient care services; and

(B) in the case of clause (B) of such paragraph, if the individual will be employed to serve in a country other than the United States and the individual's licensure or registration is in the country in which the individual is to serve.

(c) The program of training prescribed by the Secretary in order to qualify a person for the position of full-time physician assistant or expanded-function dental auxiliary shall be considered a full-time institutional program for purposes of chapter 34 of this title. The Secretary may consider training for such a position to be on a less than full-time basis for purposes of such chapter when the combined classroom (and other formal instruction) portion of the program and the on-the-job training portion of the program total less than 30 hours per week.

(d) A person may not be appointed under section 7405 or 7406 of this title to an occupational category described in section 7401(1) of this title or in section 7406 of this title unless the person meets the requirements established in section 7402(d) of this title and regulations prescribed under that section.

(e) In accordance with the provisions of section 7425(b) of this title, the provisions of chapter 34 of title 5 pertaining to part-time career employment shall not apply to part-time appointments under sections 7405 and 7406 of this title.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 228; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(c)-(g) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992 - Subsecs. (a), (b)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

-End-

-CITE-

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7408. Appointment of additional employees

-STATUTE-

(a) There shall be appointed by the Secretary under civil service laws, rules, and regulations, such additional employees, other than those provided in section 7306 and paragraphs (1) and (3) of section 7401 of this title and those specified in sections 7405 and 7406 of this title, as may be necessary to carry out the provisions of this chapter.

(b) The Secretary, after considering an individual's existing pay, higher or unique qualifications, or the special needs of the Department, may appoint the individual to a position in the Administration providing direct patient-care services or services incident to direct patient-services at a rate of pay above the minimum rate of the appropriate grade.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 103-446, title XII, Sec. 1201(e)(21), Nov. 2, 1994, 108 Stat. 4686.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4111 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-446 substituted "civil service" for "civil-service".

-End-

-CITE-

38 USC Sec. 7409

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7409. Contracts for scarce medical specialist services

-STATUTE-

(a) The Secretary may enter into contracts with institutions and persons described in subsection (b) to provide scarce medical



specialist services at Department facilities. Such services may include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel.

(b) Institutions and persons with whom the Secretary may enter into contracts under subsection (a) are the following:

- (1) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing.
- (2) Clinics.
- (3) Any other group or individual capable of furnishing such scarce medical specialist services.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 108-170, title III, Sec. 302(f), Dec. 6, 2003, 117 Stat. 2058.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4117 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2003 - Subsec. (a). Pub. L. 108-170 inserted "chiropractors," after "optometrists," in second sentence.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

-End-

-CITE-

38 USC Sec. 7410 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7410. Additional pay authorities

-STATUTE-

(a) In General. - The Secretary may authorize the Under Secretary for Health to pay advance payments, recruitment or relocation bonuses, and retention allowances to the personnel described in paragraph (1) of section 7401 of this title, or interview expenses to candidates for appointment as such personnel, in the same manner, and subject to the same limitations, as in the case of the authority provided under sections 5524a, 5706b, 5753, and 5754 of title 5.

(b) Special Incentive Pay for Department Pharmacist Executives. -

(1) In order to recruit and retain highly qualified Department pharmacist executives, the Secretary may authorize the Under Secretary for Health to pay special incentive pay of not more than \$40,000 per year to an individual of the Veterans Health Administration who is a pharmacist executive.

(2) In determining whether and how much special pay to provide to such individual, the Under Secretary shall consider the following:

- (A) The grade and step of the position of the individual.
- (B) The scope and complexity of the position of the individual.
- (C) The personal qualifications of the individual.
- (D) The characteristics of the labor market concerned.
- (E) Such other factors as the Secretary considers appropriate.

(3) Special incentive pay under paragraph (1) for an individual is in addition to all other pay (including basic pay) and allowances to which the individual is entitled.

(4) Except as provided in paragraph (5), special incentive pay under paragraph (1) for an individual shall be considered basic pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits.

(5) Special incentive pay under paragraph (1) for an individual shall not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.

(6) Special incentive pay under paragraph (1) may not be awarded to an individual in an amount that would result in an aggregate amount of pay (including bonuses and awards) received by such individual in a year under this title that is greater than the annual pay of the President.

-SOURCE-

(Added Pub. L. 102-40, title I, Sec. 103(a)[(1)], May 7, 1991, 105 Stat. 198; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 111-163, title VI, Sec. 601(e), May 5, 2010, 124 Stat. 1169.)

-MISC1-

AMENDMENTS

2010 - Pub. L. 111-163 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1992 - Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

-End-

-CITE-

38 USC Sec. 7411

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER I - APPOINTMENTS

-HEAD-

Sec. 7411. Full-time board-certified physicians and dentists:  
reimbursement of continuing professional education expenses

-STATUTE-

The Secretary shall reimburse any full-time board-certified physician or dentist appointed under section 7401(1) of this title for expenses incurred, up to \$1,000 per year, for continuing professional education.

-SOURCE-

(Added Pub. L. 102-40, title I, Sec. 103(a)[(1)], May 7, 1991, 105 Stat. 199.)

-MISC1-

EFFECTIVE DATE

Section 103(b) of Pub. L. 102-40 provided that: "Section 7411 of title 38, United States Code, as added by subsection (a), shall apply with respect to expenses incurred for continuing professional education that is pursued after September 30, 1991."

-End-

-CITE-

38 USC SUBCHAPTER II - COLLECTIVE BARGAINING AND  
PERSONNEL ADMINISTRATION 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER II - COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

-HEAD-

SUBCHAPTER II - COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

-End-

-CITE-

38 USC Sec. 7421 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER II - COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

-HEAD-

Sec. 7421. Personnel administration: in general

-STATUTE-

(a) Notwithstanding any law, Executive order, or regulation, the Secretary shall prescribe by regulation the hours and conditions of employment and leaves of absence of employees appointed under any provision of this chapter in positions in the Veterans Health Administration listed in subsection (b).

(b) Subsection (a) refers to the following positions:

- (1) Physicians.
- (2) Dentists.
- (3) Podiatrists.
- (4) Optometrists.
- (5) Registered nurses.

- (6) Physician assistants.
- (7) Expanded-duty dental auxiliaries.
- (8) Chiropractors.

-SOURCE-

(Added Pub. L. 102-40, title II, Sec. 202, May 7, 1991, 105 Stat. 200; amended Pub. L. 108-170, title III, Sec. 302(g), Dec. 6, 2003, 117 Stat. 2058.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4108(a) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2003 - Subsec. (b)(8). Pub. L. 108-170 added par. (8).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

PRESERVATION OF EXISTING COLLECTIVE-BARGAINING ARRANGEMENTS AND PENDING ACTIONS

Section 205 of Pub. L. 102-40 provided that:

"(a) Existing Collective-Bargaining Arrangements. - Any determination under chapter 71 of title 5, United States Code, of a collective bargaining unit within the Veterans Health Administration of the Department of Veterans Affairs, and any recognition under that chapter of an employee labor organization as the exclusive bargaining representative for employees in a collective bargaining unit of the Department of Veterans Affairs, that is in effect on the date of the enactment of this Act [May 7, 1991] shall not be affected by the amendments made by this Act [see Tables for classification] and shall continue in effect in accordance with the terms of such determination or regulation.

"(b) Pending Cases. - With respect to cases pending on the date of the enactment of this Act [May 7, 1991], or those cases which are brought before the establishment of either an administrative grievance procedure pursuant to section 7463 of title 38, United States Code (as added by the amendments made by this title), or a negotiated grievance procedure established under a collective bargaining agreement, such cases shall proceed in the same manner as they would have if this Act [see Tables for classification] had not been enacted."

-End-

-CITE-

38 USC Sec. 7422

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER II - COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

-HEAD-

Sec. 7422. Collective bargaining

-STATUTE-

(a) Except as otherwise specifically provided in this title, the authority of the Secretary to prescribe regulations under section 7421 of this title is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5 (relating to labor-management relations).

(b) Such collective bargaining (and any grievance procedures provided under a collective bargaining agreement) in the case of employees described in section 7421(b) of this title may not cover, or have any applicability to, any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title.

(c) For purposes of this section, the term "professional conduct or competence" means any of the following:

- (1) Direct patient care.
- (2) Clinical competence.

(d) An issue of whether a matter or question concerns or arises out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title shall be decided by the Secretary and is not itself subject to collective bargaining and may not be reviewed by any other agency.

(e) A petition for judicial review or petition for enforcement under section 7123 of title 5 in any case involving employees described in section 7421(b) of this title or arising out of the applicability of chapter 71 of title 5 to employees in those positions, shall be taken only in the United States Court of Appeals for the District of Columbia Circuit.

-SOURCE-

(Added Pub. L. 102-40, title II, Sec. 202, May 7, 1991, 105 Stat. 200.)

-End-

-CITE-

38 USC Sec. 7423

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER II - COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

-HEAD-

Sec. 7423. Personnel administration: full-time employees

-STATUTE-

(a) The hours of employment in carrying out responsibilities under this title of any employee who is appointed in the Administration under any provision of this chapter on a full-time

basis in a position listed in section 7421(b) of this title (other than an intern or resident appointed pursuant to section 7406 of this title) and who accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title shall consist of not less than 80 hours in a biweekly pay period (as that term is used in section 5504 of title 5).

(b) A person covered by subsection (a) may not do any of the following:

(1) Teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title.

(2) Accept payment under any insurance or assistance program established under title XVIII or XIX of the Social Security Act or under chapter 55 of title 10 for professional services rendered by such person while carrying out such person's responsibilities under this title.

(3) Accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5.

(4) Request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, except where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title.

(5) Perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both.

(c) In the case of any fund or account described in subsection (b)(5) that was established before September 1, 1973 -

(1) the affiliated institution shall submit semiannually an accounting to the Secretary and to the Comptroller General of the United States with respect to such fund or account and shall maintain such fund or account subject to full public disclosure and audit by the Secretary and the Comptroller General for a period of three years or for such longer period as the Secretary shall prescribe, and

(2) no person in a position specified in paragraph (1)(B) may receive any cash from amounts deposited in such fund or account derived from services performed before that date.

(d) As used in this section:

(1) The term "affiliated institution" means a medical school or other institution of higher learning with which the Secretary has a contract or agreement as referred to in section 7313 of this title for the training or education of health personnel.

(2) The term "remuneration" means the receipt of any amount of monetary benefit from any non-Department source in payment for carrying out any professional responsibilities.

(e)(1) The Secretary shall establish a leave transfer program for

the benefit of health-care professionals in positions listed in section 7401(1) of this title. The Secretary may also establish a leave bank program for the benefit of such health-care professionals.

(2) To the maximum extent feasible -

(A) the leave transfer program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

(B) any leave bank program established pursuant to paragraph (1) shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

(3) Participation by a health-care professional in the leave transfer program established pursuant to paragraph (1), and in any leave bank program established pursuant to such paragraph, shall be voluntary. The Secretary may not require any health-care professional to participate in such a program.

(4)(A) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) to participate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5 or in any leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5, or both.

(B) Participation of such health-care professionals in a leave transfer program or a leave bank program pursuant to an agreement entered into under subparagraph (A) shall be subject to such requirements and conditions as may be prescribed in such agreement.

(5) The Secretary is not required to establish a leave transfer program for any personnel permitted to participate in a leave transfer program pursuant to an agreement referred to in paragraph (4).

(f) The Secretary may purchase promotional items of nominal value for use in the recruitment of individuals for employment under this chapter. The Secretary shall prescribe guidelines for the administration of the preceding sentence.

**-SOURCE-**

(Added and amended Pub. L. 102-40, title II, Sec. 202, title IV, Sec. 401(b)(3)(A), May 7, 1991, 105 Stat. 201, 230; Pub. L. 102-405, title II, Sec. 203, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 104-262, title III, Sec. 347, Oct. 9, 1996, 110 Stat. 3208.)

**-REFTEXT-**

**REFERENCES IN TEXT**

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (Sec. 1395 et seq.) and XIX (Sec. 1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

**-MISC1-**

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in

section 4108(a), (c), and (e) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

#### AMENDMENTS

1996 - Subsec. (b). Pub. L. 104-262, Sec. 347(a), redesignated pars. (2) to (6) as (1) to (5), respectively, and struck out former par. (1) which read as follows: "Assume responsibility for the medical care of any patient other than a patient admitted for treatment at a Department facility, except in those cases where the person, upon request and with the approval of the Under Secretary for Health, assumes such responsibilities to assist communities or medical practice groups to meet medical needs which would not otherwise be available for a period not to exceed 180 calendar days, which may be extended by the Under Secretary for Health for additional periods not to exceed 180 calendar days each."

Subsec. (c). Pub. L. 104-262, Sec. 347(b), substituted "subsection (b)(5)" for "subsection (b)(6)" in introductory provisions.

1992 - Subsec. (b)(1). Pub. L. 102-405, Sec. 302(c)(1), substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

Subsec. (f). Pub. L. 102-405, Sec. 203, added subsec. (f).

1991 - Subsec. (e). Pub. L. 102-40, Sec. 401(b)(3)(A), added subsec. (e).

#### ESTABLISHMENT OF LEAVE BANK PROGRAM

For provision authorizing the establishment of a leave bank program for health-care professional covered under subsec. (e) of former section 4108 of this title [now covered by subsec. (e) of this section] similar to the leave bank program for Federal civilian employees in reserves who were activated during Persian Gulf War, see section 361 of Pub. L. 102-25, set out as a Leave Bank for Federal Civilian Employees in Reserves Who Were Activated During Persian Gulf War note under section 6361 of Title 5, Government Organization and Employees.

-End-

-CITE-

38 USC Sec. 7424

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER II - COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

-HEAD-

Sec. 7424. Travel expenses of certain employees

-STATUTE-

(a) The Secretary may pay the expenses (other than membership fees) of persons described in sections 7306 and 7401(1) of this title (including persons in positions described in section 7401(1) of this title who are appointed on a temporary full-time basis or a part-time basis under section 7405 of this title) who are detailed by the Under Secretary for Health to attend meetings of associations for the promotion of medical and related science.



(b)(1) The Secretary may prescribe regulations establishing conditions under which officers and employees of the Administration who are nationally recognized principal investigators in medical research may be permitted to accept payment, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel and such reasonable subsistence expenses as are approved by the Secretary pursuant to such regulations -

(A) in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the Department; or

(B) in connection with acceptance of significant awards or with activity related thereto concerned with functions or activities of the Department.

(2) Any such payment may be retained by such officers and employees to cover the cost of such expenses or shall be deposited to the credit of the appropriation from which the cost of such expenses is paid, as may be provided in such regulations.

**-SOURCE-**

(Added Pub. L. 102-40, title IV, Sec. 401(b)(3)(B), May 7, 1991, 105 Stat. 230; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

**-MISC1-**

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in sections 4108(d) and 4113 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

**AMENDMENTS**

1992 - Subsec. (a). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

**-End-**

**-CITE-**

38 USC Sec. 7425

01/03/2012 (112-90)

**-EXPCITE-**

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER II - COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

**-HEAD-**

Sec. 7425. Employees: laws not applicable

**-STATUTE-**

(a) Physicians, dentists, nurses, and other health-care professionals employed by the Administration and appointed under section 7306, 7401(1), 7405, or 7406 of this chapter are not subject to the following provisions of law:

(1) Section 413 of the Civil Service Reform Act of 1978.

(2) Subchapter II of chapter 31 of title 5.

(3) Subchapter VIII of chapter 33 of title 5.

(4) Subchapter V of chapter 35 of title 5.

- (5) Subchapter II of chapter 43 of title 5.
- (6) Section 4507 of title 5.
- (7) Subchapter VIII of chapter 53 of title 5.
- (8) Subchapter V of chapter 75 of title 5.

(b) Notwithstanding any other provision of law, no provision of title 5 or any other law pertaining to the civil service system which is inconsistent with any provision of section 7306 of this title or this chapter shall be considered to supersede, override, or otherwise modify such provision of that section or this chapter except to the extent that such provision of title 5 or of such other law specifically provides, by specific reference to a provision of this chapter, or such provision to be superseded, overridden, or otherwise modified.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(3)(B), May 7, 1991, 105 Stat. 231.)

-REFTEXT-

REFERENCES IN TEXT

Section 413 of the Civil Service Reform Act of 1978, referred to in subsec. (a)(1), is section 413 of Pub. L. 95-454, title IV, Oct. 13, 1978, 92 Stat. 1175, which is set out as a note under section 3133 of Title 5, Government Organization and Employees.

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4101(e) and 4119 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

-End-

-CITE-

38 USC Sec. 7426

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER II - COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

-HEAD-

Sec. 7426. Retirement rights

-STATUTE-

(a) Except as provided in subsection (b), persons appointed to the Administration shall be subject to the provisions of and entitled to benefits under subchapter III of chapter 83 of title 5 or subchapter II of chapter 84 of title 5, whichever is applicable.

(b)(1) In computing the annuity under subchapter III of chapter 83, or subchapter II of chapter 84, of title 5 of an individual who retires under such subchapter (other than under section 8337 or 8451 of such title) after December 31, 1981, and who served at any time on a less-than-full-time basis in a position in the Administration to which such individual was appointed under

subchapter I -

(A) for the purpose of determining such individual's average pay, as defined by section 8331(4) or 8401(3) of title 5, whichever is applicable, the annual rate of basic pay for full-time service shall be deemed to be such individual's rate of basic pay; and

(B) the amount of such individual's annuity as computed under section 8339 or 8415 of title 5 (before application of any reduction required by subsection (i) of section 8339) shall be multiplied by the fraction equal to the ratio that that individual's total full-time equivalent service bears to that individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable.

(2) For the purposes of paragraph (1)(B), an individual's full-time equivalent service is the individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable, except that any period of service of such individual served on a less-than-full-time basis shall be prorated based on the fraction such service bears to full-time service. For the purposes of the preceding sentence, full-time service shall be considered to be 80 hours of service per biweekly pay period.

(3) A survivor annuity computed under section 8341, or subchapter IV of chapter 84, of title 5 based on the service of an individual described in paragraph (1) shall be computed based upon such individual's annuity as determined in accordance with such paragraph.

(c) The provisions of subsection (b) shall not apply to the part-time service before April 7, 1986, of a registered nurse, physician assistant, or expanded-function dental auxiliary. In computing the annuity under the applicable provision of law specified in that subsection of an individual covered by the preceding sentence, the service described in that sentence shall be credited as full-time service.

**-SOURCE-**

(Added Pub. L. 102-40, title IV, Sec. 401(b)(3)(B), May 7, 1991, 105 Stat. 231; amended Pub. L. 102-585, title V, Sec. 522, Nov. 4, 1992, 106 Stat. 4959; Pub. L. 106-398, Sec. 1 [[div. A], title X, Sec. 1087(g)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A-294; Pub. L. 107-135, title I, Sec. 132, Jan. 23, 2002, 115 Stat. 2454.)

**-MISC1-**

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in sections 4107(i) and 4109 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

**AMENDMENTS**

2002 - Subsec. (c). Pub. L. 107-135 added subsec. (c).

2000 - Subsec. (c). Pub. L. 106-398 struck out subsec. (c) which read as follows: "The Secretary may authorize an exception to the restrictions in subsections (a), (b), and (c) of section 5532 of title 5 if necessary to meet special or emergency employment needs which result from a severe shortage of well-qualified candidates in physician positions, and registered nurse positions, which otherwise cannot be readily met. The authority of the Secretary under the preceding sentence with respect to registered-nurse positions expires on December 31, 1994."

1992 - Subsec. (c). Pub. L. 102-585 substituted "December 31, 1994" for "September 30, 1992".

-End-

-CITE-

38 USC SUBCHAPTER III - PAY FOR PHYSICIANS AND DENTISTS 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER III - PAY FOR PHYSICIANS AND DENTISTS

-HEAD-

SUBCHAPTER III - PAY FOR PHYSICIANS AND DENTISTS

-COD-

#### CODIFICATION

This subchapter was originally added by Pub. L. 102-40, May 7, 1991, 105 Stat. 187, and amended by Pub. L. 102-405, Oct. 9, 1992, 106 Stat. 1972; Pub. L. 104-262, Oct. 9, 1996, 110 Stat. 3177; Pub. L. 103-446, Nov. 2, 1994, 108 Stat. 4645; Pub. L. 106-419, Nov. 1, 2000, 114 Stat. 1822. This subchapter is shown here, however, as having been added by Pub. L. 108-445, Sec. 3(b), Dec. 3, 2004, 118 Stat. 2636, without reference to those intervening amendments because of the general amendment of this subchapter by Pub. L. 108-445.

-MISC1-

#### AMENDMENTS

2004 - Pub. L. 108-445, Sec. 3(b), Dec. 3, 2004, 118 Stat. 2636, substituted "PAY FOR PHYSICIANS AND DENTISTS" for "SPECIAL PAY FOR PHYSICIANS AND DENTISTS" in subchapter heading.

-End-

-CITE-

38 USC Sec. 7431 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER III - PAY FOR PHYSICIANS AND DENTISTS

-HEAD-

Sec. 7431. Pay

-STATUTE-

(a) Elements of Pay. - Pay of physicians and dentists in the Veterans Health Administration shall consist of three elements as follows:

- (1) Base pay as provided for under subsection (b).
- (2) Market pay as provided for under subsection (c).
- (3) Performance pay as provided under subsection (d).

(b) Base Pay. - One element of pay for physicians and dentists shall be base pay. Base pay shall meet the following requirements:

(1) Each physician and dentist is entitled to base pay determined under the Physician and Dentist Base and Longevity Pay Schedule.

(2) The Physician and Dentist Base and Longevity Pay Schedule is composed of 15 rates of base pay designated, from the lowest rate of pay to the highest rate of pay, as base pay steps 1 through 15.

(3) The rate of base pay payable to a physician or dentist is based on the total number of the years of the service of the physician or dentist in the Veterans Health Administration as follows:

For a physician or dentist with total service of:	The rate of base pay is the rate payable for:
two years or less	step 1
more than 2 years and not more than 4 years	step 2
more than 4 years and not more than 6 years	step 3
more than 6 years and not more than 8 years	step 4
more than 8 years and not more than 10 years	step 5
more than 10 years and not more than 12 years	step 6
more than 12 years and not more than 14 years	step 7
more than 14 years and not more than 16 years	step 8
more than 16 years and not more than 18 years	step 9
more than 18 years and not more than 20 years	step 10
more than 20 years and not more than 22 years	step 11
more than 22 years and not more than 24 years	step 12
more than 24 years and not more than 26 years	step 13
more than 26 years and not more than 28 years	step 14
more than 28 years	step 15.

(4) At the same time as rates of basic pay are increased for a year under section 5303 of title 5, the Secretary shall increase the amount of base pay payable under this subsection for that year by a percentage equal to the percentage by which rates of basic pay are increased under such section for that year.

(5) The non-foreign cost of living adjustment allowance authorized under section 5941 of title 5 for physicians and dentists whose pay is set under this section shall be determined as a percentage of base pay only.

(c) Market Pay. - One element of pay for physicians and dentists shall be market pay. Market pay shall meet the following requirements:

(1) Each physician and dentist is eligible for market pay.

(2) Market pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment (as defined by the Secretary) of a particular physician or dentist in a facility of the Department of Veterans Affairs.

(3) The annual amount of the market pay payable to a physician or dentist shall be determined by the Secretary on a case-by-case basis.

(4)(A) In determining the amount of market pay for physicians or dentists, the Secretary shall consult two or more national surveys of pay for physicians or dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians or dentists, as applicable.

(B)(i) In determining the amount of the market pay for a particular physician or dentist under this subsection, and in determining a tier (if any) to apply to a physician or dentist under subsection (e)(1)(B), the Secretary shall consult with and consider the recommendations of an appropriate panel or board composed of physicians or dentists (as applicable). The Secretary may exempt physicians and dentists occupying administrative or executive leadership positions from the requirements of the previous sentence.

(ii) A physician or dentist may not be a member of the panel or board that makes recommendations under clause (i) with respect to the market pay of such physician or dentist, as the case may be.

(iii) The Secretary should, to the extent practicable, ensure that a panel or board consulted under this subparagraph includes physicians or dentists (as applicable) who are practicing clinicians and who do not hold management positions in the medical facility of the Department at which the physician or dentist subject to the consultation is employed.

(5) The determination of the amount of market pay of a physician or dentist shall take into account -

(A) the level of experience of the physician or dentist in the specialty or assignment of the physician or dentist;

(B) the need for the specialty or assignment of the physician or dentist at the medical facility of the Department concerned;

(C) the health care labor market for the specialty or assignment of the physician or dentist, which may cover any geographic area the Secretary considers appropriate for the specialty or assignment;

(D) the board certifications, if any, of the physician or dentist;

(E) the prior experience, if any, of the physician or dentist as an employee of the Veterans Health Administration; and

(F) such other considerations as the Secretary considers appropriate.

(6) The amount of market pay of a physician or dentist shall be evaluated by the Secretary not less often than once every 24 months. The amount of market pay may be adjusted as the result of an evaluation under this paragraph. A physician or dentist whose market pay is evaluated under this paragraph shall receive written notice of the results of such evaluation in accordance with procedures prescribed under section 7433 of this title.

(7) No adjustment of the amount of market pay of a physician or dentist under paragraph (6) may result in a reduction of the amount of market pay of the physician or dentist while in the same position or assignment at the medical facility of the Department concerned, unless there is a change in board certification or reduction of privileges.

(d) Performance Pay. - (1) One element of pay for physicians and dentists shall be performance pay.

(2) Performance pay shall be paid to a physician or dentist on the basis of the physician's or dentist's achievement of specific goals and performance objectives prescribed by the Secretary.

(3) The Secretary shall ensure that each physician and dentist of the Department is advised of the specific goals or objectives that are to be measured by the Secretary in determining the eligibility of that physician or dentist for performance pay.

(4) The amount of the performance pay payable to a physician or dentist may vary annually on the basis of individual achievement or attainment of the goals or objectives applicable to the physician

or dentist under paragraph (2).

(5) The amount of performance pay payable to a physician or dentist in a fiscal year shall be determined in accordance with regulations prescribed by the Secretary, but may not exceed the lower of -

(A) \$15,000; or

(B) the amount equal to 7.5 percent of the sum of the base pay and the market pay payable to such physician or dentist in that fiscal year.

(6) A failure to meet goals or objectives applicable to a physician or dentist under paragraph (2) may not be the sole basis for an adverse personnel action against that physician or dentist.

(e) Requirements and Limitations on Total Pay. - (1)(A) Not less often than once every two years, the Secretary shall prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid under this section to physicians and the minimum and maximum amounts of annual pay that may be paid under this section to dentists.

(B) The Secretary may prescribe for Department-wide applicability under this paragraph separate minimum and maximum amounts of pay for a specialty or assignment. If the Secretary prescribes separate minimum and maximum amounts for a specialty or assignment, the Secretary may establish up to four tiers of minimum and maximum amounts for such specialty or assignment and prescribe for each tier a minimum amount and a maximum amount that the Secretary determines appropriate for the professional responsibilities, professional achievements, and administrative duties of the physicians or dentists (as the case may be) whose pay is set within that tier.

(C) Amounts prescribed under this paragraph shall be published in the Federal Register, and shall not take effect until at least 60 days after the date of publication.

(2) Except as provided in paragraph (3) and subject to paragraph (4), the sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may not be less than the minimum amount, nor more than the maximum amount, applicable to specialty or assignment of the physician or dentist under paragraph (1).

(3) The sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may exceed the maximum amount applicable to the specialty or assignment of the physician or dentist under paragraph (1) as a result of an adjustment under paragraph (3) or (4) of subsection (b).

(4) In no case may the total amount of compensation paid to a physician or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(f) Treatment of Pay. - Pay under subsections (b) and (c) of this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

(g) Ancillary Effects of Decreases in Pay. - (1) A decrease in pay of a physician or dentist resulting from an adjustment in the amount of market pay of the physician or dentist under subsection (c) shall not be treated as an adverse action.

(2) If the pay of a physician or dentist is reduced under this subchapter as a result of an involuntary reassignment in connection

with a disciplinary action taken against the physician or dentist, the involuntary reassignment shall be subject to appeal under subchapter V of this chapter.

(h) Delegation of Responsibilities. - The Secretary may delegate to an appropriate officer or employee of the Department any responsibility of the Secretary under subsection (c), (d), or (e) except for the responsibilities of the Secretary under subsection (e)(1).

-SOURCE-

(Added Pub. L. 108-445, Sec. 3(b), Dec. 3, 2004, 118 Stat. 2636; amended Pub. L. 111-163, title VI, Sec. 601(f), May 5, 2010, 124 Stat. 1170.)

-MISC1-

PRIOR PROVISIONS

A prior section 7431, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 188; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984, related to authority of Secretary to provide for special pay, prior to the general amendment of this subchapter by Pub. L. 108-445.

AMENDMENTS

2010 - Subsec. (b)(5). Pub. L. 111-163, Sec. 601(f)(1), added par. (5).

Subsec. (c)(4)(B)(i). Pub. L. 111-163, Sec. 601(f)(2), inserted at end "The Secretary may exempt physicians and dentists occupying administrative or executive leadership positions from the requirements of the previous sentence."

Subsec. (c)(7). Pub. L. 111-163, Sec. 601(f)(3), substituted "concerned, unless there is a change in board certification or reduction of privileges." for "concerned."

EFFECTIVE DATE

Pub. L. 108-445, Sec. 3(d), Dec. 3, 2004, 118 Stat. 2641, provided that:

"(1) Notwithstanding the 60-day waiting requirement in section 7431(e)(1)(C) of title 38, United States Code (as amended by subsection (b)), pay provided for a physician or dentist under subchapter III of chapter 74 of such title, as amended by subsection (b), shall take effect on the first day of the first pay period applicable to such physician or dentist that begins on or after January 1, 2006.

"(2) Pay provided for the Under Secretary for Health under subchapter III of chapter 74 of title 38, United States Code, as amended by this section shall take effect on the first day of the first pay period applicable to the Under Secretary that begins on or after January 1, 2006."

PILOT PROGRAM ON INCENTIVES FOR PHYSICIANS WHO ASSUME INPATIENT RESPONSIBILITIES AT COMMUNITY HOSPITALS IN HEALTH PROFESSIONAL SHORTAGE AREAS

Pub. L. 111-163, title III, Sec. 306, May 5, 2010, 124 Stat. 1152, provided that:

"(a) Pilot Program Required. - The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility [sic] and advisability of each of the following:

"(1) The provision of financial incentives to eligible physicians who obtain and maintain inpatient privileges at community hospitals in health professional shortage areas in



order to facilitate the provision by such physicians of primary care and mental health services to veterans at such hospitals.

"(2) The collection of payments from third-party providers for care provided by eligible physicians to nonveterans while discharging inpatient responsibilities at community hospitals in the course of exercising the privileges described in paragraph (1).

"(b) Eligible Physicians. - For purposes of this section, an eligible physician is a primary care or mental health physician employed by the Department of Veterans Affairs on a full-time basis.

"(c) Duration of Program. - The pilot program shall be carried out during the 3-year period beginning on the date of the commencement of the pilot program.

"(d) Locations. -

"(1) In general. - The pilot program shall be carried out at not less than five community hospitals in each of not less than two Veterans Integrated Services Networks. The hospitals shall be selected by the Secretary using the results of the survey required under subsection (e).

"(2) Qualifying community hospitals. - A community hospital may be selected by the Secretary as a location for the pilot program if -

"(A) the hospital is located in a health professional shortage area; and

"(B) the number of eligible physicians willing to assume inpatient responsibilities at the hospital (as determined using the result of the survey) is sufficient for purposes of the pilot program.

"(e) Survey of Physician Interest in Participation. -

"(1) In general. - Not later than 120 days after the date of the enactment of this Act [May 5, 2010], the Secretary shall conduct a survey of eligible physicians to determine the extent of the interest of such physicians in participating in the pilot program.

"(2) Elements. - The survey shall disclose the type, amount, and nature of the financial incentives to be provided under subsection (h) to physicians participating in the pilot program.

"(f) Physician Participation. -

"(1) In general. - The Secretary shall select physicians for participation in the pilot program from among eligible physicians who -

"(A) express interest in participating in the pilot program in the survey conducted under subsection (e);

"(B) are in good standing with the Department; and

"(C) primarily have clinical responsibilities with the Department.

"(2) Voluntary participation. - Participation in the pilot program shall be voluntary. Nothing in this section shall be construed to require a physician working for the Department to assume inpatient responsibilities at a community hospital unless otherwise required as a term or condition of employment with the Department.

"(g) Assumption of Inpatient Physician Responsibilities. -

"(1) In general. - Each eligible physician selected for participation in the pilot program shall assume and maintain inpatient responsibilities, including inpatient responsibilities with respect to nonveterans, at one or more community hospitals selected by the Secretary for participation in the pilot program under subsection (d).

"(2) Coverage under federal tort claims act. - If an eligible

physician participating in the pilot program carries out on-call responsibilities at a community hospital where privileges to practice at such hospital are conditioned upon the provision of services to individuals who are not veterans while the physician is on call for such hospital, the provision of such services by the physician shall be considered an action within the scope of the physician's office or employment for purposes of chapter 171 of title 28, United States Code (commonly referred to as the 'Federal Tort Claims Act').

"(h) Compensation. -

"(1) In general. - The Secretary shall provide each eligible physician participating in the pilot program with such compensation (including pay and other appropriate compensation) as the Secretary considers appropriate to compensate such physician for the discharge of any inpatient responsibilities by such physician at a community hospital for which such physician would not otherwise be compensated by the Department as a full-time employee of the Department.

"(2) Written agreement. - The amount of any compensation to be provided a physician under the pilot program shall be specified in a written agreement entered into by the Secretary and the physician for purposes of the pilot program.

"(3) Treatment of compensation. - The Secretary shall consult with the Director of the Office of Personnel Management on the inclusion of a provision in the written agreement required under paragraph (2) that describes the treatment under Federal law of any compensation provided a physician under the pilot program, including treatment for purposes of retirement under the civil service laws.

"(i) Collections From Third Parties. - In carrying out the pilot program for the purpose described in subsection (a)(2), the Secretary shall implement a variety and range of requirements and mechanisms for the collection from third-party payors of amounts to reimburse the Department for health care services provided to nonveterans under the pilot program by eligible physicians discharging inpatient responsibilities under the pilot program.

"(j) Report. - Not later than 1 year after the date of the enactment of this Act [May 5, 2010] and annually thereafter, the Secretary shall submit to Congress a report on the pilot program, including the following:

"(1) The findings of the Secretary with respect to the pilot program.

"(2) The number of veterans and nonveterans provided inpatient care by physicians participating in the pilot program.

"(3) The amounts payable and collected under subsection (i).

"(k) Definitions. - In this section:

"(1) Health professional shortage area. - The term 'health professional shortage area' has the meaning given the term in section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)).

"(2) Inpatient responsibilities. - The term 'inpatient responsibilities' means on-call responsibilities customarily required of a physician by a community hospital as a condition of granting privileges to the physician to practice in the hospital."

#### TRANSITION PROVISIONS

Pub. L. 108-445, Sec. 3(e), Dec. 3, 2004, 118 Stat. 2641, provided that:

"(1) Physicians and dentists. -

"(A) Pay. - (i) The amount of the pay payable on and after the

date of the enactment of this Act [Dec. 3, 2004] to a physician or dentist in receipt of pay under section 7404 or 7405 of title 38, United States Code, as of the day before such date shall continue to be determined under such section (as in effect on the day before such date) until the effective date that is applicable under subsection (d) [set out as a note above] to such physician or dentist, as the case may be.

"(ii) A physician or dentist appointed or reassigned on or after the date of the enactment of this Act, but before the effective date applicable under subsection (d) to such physician or dentist, shall be compensated in accordance with applicable provisions of section 7404 or 7405 of title 38, United States Code (as in effect on the day before date of the enactment of this Act), until such effective date.

"(B) Special pay. - (i) A special pay agreement entered into by a physician or dentist under subchapter III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act shall terminate on the date of the enactment of this Act. However, a physician or dentist in receipt of special pay pursuant to such an agreement on that date shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) to such physician or dentist.

"(ii) A physician or dentist described in subparagraph (A)(ii) may be paid special pay under applicable provisions of section 7433, 7434, 7435, or 7436 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of the appointment or reassignment of such physician or dentist, as the case may be, and ending on the effective date applicable under subsection (d) to such physician or dentist. However, no special pay agreement shall be required for the payment of special pay under this clause.

"(C) Treatment of special pay. - (i) Special pay paid under subparagraph (B) to a physician or dentist during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to such physician or dentist shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act).

"(ii) Special pay paid to a physician or dentist under section 7438 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

"(D) Preservation of pay. - The amount of pay paid to a physician or dentist after the effective date of this Act shall not be less than the amount of pay paid to such physician or dentist on the day before the effective date of this Act while such physician or dentist remains in the same position or assignment.

"(2) Under secretary for health. -

"(A) Special pay. - (i) The current special pay agreement entered into by the Under Secretary for Health under subchapters I and III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act [Dec. 3, 2004] shall terminate on the date of the enactment of this Act. However, the Under Secretary shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) [set out as a note above] to the

Under Secretary.

"(ii) An individual appointed as Under Secretary for Health on or after the date of the enactment of this Act and before the effective date applicable under subsection (d) to the Under Secretary shall be paid special pay in accordance with the provisions of sections 7432(d)(2) and 7433 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of appointment and ending on such effective date. However, no special pay agreement shall be required for the payment of special pay under this clause.

"(B) Treatment of special pay. - Special pay paid under subparagraph (A) during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to the Under Secretary -

"(i) shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act); and

"(ii) shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code."

#### INITIAL RATES OF BASE PAY FOR PHYSICIANS AND DENTISTS

Pub. L. 108-445, Sec. 3(c), Dec. 3, 2004, 118 Stat. 2641, provided that: "The initial rates of base pay established for the base pay steps under the Physician and Dentist Base and Longevity Pay Schedule provided in section 7431(b) of title 38, United States Code (as added by subsection (b)), are as follows:

"Base Pay Step:	Rate of Pay:
1	\$90,000
2	\$93,000
3	\$96,000
4	\$99,000
5	\$102,000
6	\$105,000
7	\$108,000
8	\$111,000
9	\$114,000
10	\$117,000
11	\$120,000
12	\$123,000
13	\$126,000
14	\$129,000
15	\$132,000."

-End-

-CITE-

38 USC Sec. 7432

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER III - PAY FOR PHYSICIANS AND DENTISTS

-HEAD-

Sec. 7432. Pay of Under Secretary for Health

-STATUTE-

(a) Base Pay. - The base pay of the Under Secretary for Health shall be the annual rate of basic pay for positions at Level III of the Executive Schedule under section 5314 of title 5.

(b) Market Pay. - (1) In the case of an Under Secretary for Health who is also a physician or dentist, in addition to the base pay specified in subsection (a) the Under Secretary for Health may also be paid the market pay element of pay of physicians and dentists under section 7431(c) of this title.

(2) The amount of market pay of the Under Secretary for Health under this subsection shall be established by the Secretary.

(3) In establishing the amount of market pay of the Under Secretary for Health under this subsection, the Secretary shall utilize an appropriate health care labor market selected by the Secretary for purposes of this subsection.

(c) Treatment of Pay. - Pay under this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

-SOURCE-

(Added Pub. L. 108-445, Sec. 3(b), Dec. 3, 2004, 118 Stat. 2640.)

-MISC1-

PRIOR PROVISIONS

A prior section 7432, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 189; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 104-262, title III, Sec. 346, Oct. 9, 1996, 110 Stat. 3208, related to written agreements for special pay, prior to the general amendment of this subchapter by Pub. L. 108-445.

-End-

-CITE-

38 USC Sec. 7433

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER III - PAY FOR PHYSICIANS AND DENTISTS

-HEAD-

Sec. 7433. Administrative matters

-STATUTE-

(a) Regulations. - (1) The Secretary shall prescribe regulations relating to the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

(2) In prescribing the regulations, the Secretary shall take into account the recommendations of the Under Secretary for Health on the administration of this subchapter. In formulating recommendations for the purpose of this paragraph, the Under Secretary shall request the views of representatives of labor organizations that are exclusive representatives of physicians and

dentists of the Department and the views of representatives of professional organizations of physicians and dentists of the Department.

(b) Reports. - (1) Not later than 18 months after the Secretary prescribes the regulations required by subsection (a), and annually thereafter for the next 5 years, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

(2) Each report under this subsection shall include the following:

(A) A description of the rates of pay in effect during the current fiscal year with a comparison to the rates in effect during the fiscal year preceding the current fiscal year, set forth by facility and by specialty.

(B) The number of physicians and dentists who left the Veterans Health Administration during the preceding fiscal year.

(C) The number of unfilled physician positions and dentist positions in each specialty in the Veterans Health Administration, the average and maximum lengths of time that such positions have been unfilled, and an assessment of the reasons that such positions remain unfilled.

(D) An assessment of the impact of implementation of this subchapter on efforts to recruit and retain physicians and dentists in the Veterans Health Administration.

(3) The first two annual reports under this subsection shall also include a comparison of staffing levels, contract expenditures, and average salaries of physicians and dentists in the Veterans Health Administration for the current fiscal year and for the fiscal year preceding the current fiscal year, set forth by facility and by specialty.

-SOURCE-

(Added Pub. L. 108-445, Sec. 3(b), Dec. 3, 2004, 118 Stat. 2640.)

-MISC1-

PRIOR PROVISIONS

Prior sections 7433 to 7440 were omitted in the general amendment of this subchapter by Pub. L. 108-445.

Section 7433, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 191; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, Sec. 1201(e)(22), Nov. 2, 1994, 108 Stat. 4686, related to special pay for full-time physicians.

Section 7434, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 192, related to special pay of part-time physicians.

Section 7435, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 193; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, Sec. 1201(e)(22), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 106-419, title II, Sec. 202(a)-(f), Nov. 1, 2000, 114 Stat. 1840, 1841, related to special pay of full-time dentists.

Section 7436, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 194, related to special pay of part-time dentists.

Section 7437, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 194; amended Pub. L. 102-405, title II, Sec. 204(a), title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984, related to general provisions concerning special pay of

physicians and dentists.

Section 7438, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 196; amended Pub. L. 106-419, title II, Sec. 202(g), Nov. 1, 2000, 114 Stat. 1841, related to coordination of special pay with other benefits laws.

Section 7439, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 197, related to periodic review and quadrennial reports regarding pay of physicians and dentists.

Section 7440, added Pub. L. 102-40, title I, Sec. 102, May 7, 1991, 105 Stat. 198; amended Pub. L. 103-446, title XII, Sec. 1201(c)(6), Nov. 2, 1994, 108 Stat. 4684, related to annual reports of the use of authorities provided in this subchapter.

-End-

-CITE-

38 USC SUBCHAPTER IV - PAY FOR NURSES AND OTHER  
HEALTH-CARE PERSONNEL 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-End-

-CITE-

38 USC Sec. 7451 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7451. Nurses and other health-care personnel: competitive pay

-STATUTE-

(a)(1) It is the purpose of this section to ensure, by a means providing increased responsibility and authority to directors of Department health-care facilities, that the rates of basic pay for health-care personnel positions described in paragraph (2) in each Department health-care facility (including the rates of basic pay of personnel employed in such positions on a part-time basis) are sufficient for that facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-care facilities in the same labor-market area in the recruitment and retention of qualified personnel for those positions.

(2) The health-care personnel positions referred to in paragraph (1) (hereinafter in this section referred to as "covered positions") are the following:

(A) Registered nurse.

(B) Such positions referred to in paragraphs (1) and (3) of

section 7401 of this title (other than the positions of physician, dentist, and registered nurse) as the Secretary may determine upon the recommendation of the Under Secretary for Health.

(3)(A) Except as provided in subparagraph (B), the rates of basic pay for covered positions in the Department shall be established and adjusted in accordance with this section instead of subsection (b)(1) of section 7404 of this title or chapter 53 of title 5.

(B) Under such regulations as the Secretary shall prescribe, the Secretary shall establish and adjust the rates of basic pay for covered positions at the following health-care facilities in order to provide rates of basic pay that enable the Secretary to recruit and retain sufficient numbers of health-care personnel in such positions at those facilities:

(i) The Veterans Memorial Medical Center in the Republic of the Philippines.

(ii) Department of Veterans Affairs health-care facilities located outside the contiguous States, Alaska, and Hawaii.

(4) The Secretary, after receiving the recommendation of the Under Secretary for Health, shall prescribe regulations setting forth criteria and procedures to carry out this section and section 7452 of this title. Requirements in such regulations for directors to provide and maintain documentation of actions taken under this section shall require no more documentation than the minimum essential for responsible administration.

(b) The Secretary shall maintain the five grade levels for nurses employed by the Department under section 7401(1) of this title as specified in the Nurse Schedule in section 7404(b) of this title. The Secretary shall, pursuant to regulations prescribed to carry out this subchapter, establish grades for other covered positions as the Secretary considers appropriate.

(c)(1) For each grade in a covered position, there shall be a range of basic pay. The maximum rate of basic pay for a grade shall be 133 percent of the minimum rate of basic pay for the grade, except that, if the Secretary determines that a higher maximum rate is necessary with respect to any such grade in order to recruit and retain a sufficient number of high-quality health-care personnel, the Secretary may raise the maximum rate of basic pay for that grade to a rate not in excess of 175 percent of the minimum rate of basic pay for the grade. Whenever the Secretary exercises the authority under the preceding sentence to establish the maximum rate of basic pay at a rate in excess of 133 percent of the minimum rate for that grade, the Secretary shall, in the next annual report required by subsection (g),(1) provide justification for doing so to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(2) The maximum rate of basic pay for any grade for a covered position may not exceed the maximum rate of basic pay established for positions in level IV of the Executive Schedule under section 5316 (1) of title 5. The maximum rate of basic pay for a grade for the position of certified registered nurse anesthetist pursuant to an adjustment under subsection (d) may exceed the maximum rate otherwise provided in the preceding sentence.

(3) The range of basic pay for each such grade shall be divided into equal increments, known as "steps". The Secretary shall prescribe the number of steps. Each grade in a covered position shall have the same number of steps. Rates of pay within a grade may not be established at rates other than whole steps. Any



increase (other than an adjustment under subsection (d)) within a grade in the rate of basic pay payable to an employee in a covered position shall be by one or more of such step increments.

(d)(1) Subject to subsection (e), the rates of basic pay for each grade in a covered position shall be adjusted periodically in accordance with this subsection in order to achieve the purposes of this section. Such adjustments shall be made -

(A) whenever there is an adjustment under section 5303 of title 5 in the rates of pay under the General Schedule, with the adjustment under this subsection to have the same effective date and to be by the same percentage as the adjustment in the rates of basic pay under the General Schedule; and

(B) at such additional times as the director of a Department health-care facility, with respect to employees in that grade at that facility, or the Under Secretary for Health, with respect to covered Regional and Central Office employees in that grade, determines.

(2) An adjustment in rates of basic pay under this subsection for a grade shall be carried out by adjusting the amount of the minimum rate of basic pay for that grade in accordance with paragraph (3) and then adjusting the other rates for that grade to conform to the requirements of subsection (c). Except as provided in paragraph (1)(A), such an adjustment in the minimum rate of basic pay for a grade shall be made by the director of a Department health-care facility so as to achieve consistency with the beginning rate of compensation for corresponding health-care professionals in the Bureau of Labor Statistics (BLS) labor-market area of that facility.

(3)(A) In the case of a Department health-care facility located in an area for which there is current information, based upon an industry-wage survey by the Bureau of Labor Statistics for that labor market, on compensation for corresponding health-care professionals for the BLS labor-market area of that facility, the director of the facility concerned shall use that information as the basis for making adjustments in rates of pay under this subsection. Whenever the Bureau of Labor Statistics releases the results of a new industry-wage survey for that labor market that includes information on compensation for corresponding health-care professionals, the director of that facility shall determine, not later than 30 days after the results of the survey are released, whether an adjustment in rates of pay for employees at that facility for any covered position is necessary in order to meet the purposes of this section. If the director determines that such an adjustment is necessary, the adjustment, based upon the information determined in the survey, shall take effect on the first day of the first pay period beginning after that determination.

(B) In the case of a Department health-care facility located in an area for which the Bureau of Labor Statistics does not have current information on compensation for corresponding health-care professionals for the labor-market area of that facility for any covered position, the director of that facility shall conduct a survey in accordance with this subparagraph and shall adjust the amount of the minimum rate of basic pay for grades in that covered position at that facility based upon that survey. To the extent practicable, the director shall use third-party industry wage surveys to meet the requirements of the preceding sentence. Any such survey shall be conducted in accordance with regulations prescribed by the Secretary. Those regulations shall be developed in consultation with the Secretary of Labor in order to ensure that the director of a facility collects information that is valid and

reliable and is consistent with standards of the Bureau. The survey should be conducted using methodology comparable to that used by the Bureau in making industry-wage surveys except to the extent determined infeasible by the Secretary. To the extent practicable, all surveys conducted pursuant to this subparagraph or subparagraph (A) shall include the collection of salary midpoints, actual salaries, lowest and highest salaries, average salaries, bonuses, incentive pays, differential pays, actual beginning rates of pay, and such other information needed to meet the purpose of this section. Upon conducting a survey under this subparagraph, the director concerned shall determine, not later than 30 days after the date on which the collection of information through the survey is completed or published, whether an adjustment in rates of pay for employees at that facility for any covered position is necessary in order to meet the purposes of this section. If the director determines that such an adjustment is necessary, the adjustment, based upon the information determined in the survey, shall take effect on the first day of the first pay period beginning after that determination.

(C)(i) A director of a Department health-care facility may use data on the compensation paid to certified registered nurse anesthetists who are employed on a salary basis by entities that provide anesthesia services through certified registered nurse anesthetists in the labor-market area only if the director -

(I) has conducted a survey of compensation for certified registered nurse anesthetists in the local labor-market area of the facility under subparagraph (B);

(II) has used all available administrative authority with regard to collection of survey data; and

(III) makes a determination (under regulations prescribed by the Secretary) that such survey methods are insufficient to permit the adjustments referred to in subparagraph (B) for such nurse anesthetists employed by the facility.

(ii) For the purposes of this subparagraph, certified registered nurse anesthetists who are so employed by such entities shall be deemed to be corresponding health-care professionals to the certified registered nurse anesthetists employed by the facility.

(D) The Under Secretary for Health shall prescribe regulations providing for the adjustment of the rates of basic pay for Regional and Central Office employees in covered positions in order to assure that those rates are sufficient and competitive.

(E) The director of a facility or Under Secretary for Health may not adjust rates of basic pay under this subsection for any pay grade so that the minimum rate of basic pay for that grade is greater than the beginning rates of compensation for corresponding positions at non-Department health-care facilities.

(F) The Under Secretary for Health shall provide appropriate education, training, and support to directors of Department health care facilities in the conduct and use of surveys, including the use of third-party surveys, under this paragraph.

(4) If the director of a Department health-care facility, or the Under Secretary for Health with respect to Regional and Central Office employees, determines, after any survey under paragraph (3)(B) that it is not necessary to adjust the rates of basic pay for employees in a grade of a covered position at that facility in order to carry out the purpose of this section, such an adjustment for employees at that facility in that grade shall not be made.

(5) Information collected by the Department in surveys conducted under this subsection is not subject to disclosure under section 552 of title 5.

(6) In this subsection -

(A) The term "beginning rate of compensation", with respect to health-care personnel positions in non-Department health-care facilities corresponding to a grade of a covered position, means the sum of -

- (i) the minimum rate of pay established for personnel in such positions who have education, training, and experience equivalent or similar to the education, training, and experience required for health-care personnel employed in the same category of Department covered positions; and
- (ii) other employee benefits for those positions to the extent that those benefits are reasonably quantifiable.

(B) The term "corresponding", with respect to health-care personnel positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care personnel positions in Department health-care facilities.

(e)(1) An adjustment in a rate of basic pay under subsection (d) may not reduce the rate of basic pay applicable to any grade of a covered position.

(2) The director of a Department health-care facility, in determining whether to carry out a wage survey under subsection (d)(3) with respect to rates of basic pay for a grade of a covered position, may not consider as a factor in such determination the absence of a current recruitment or retention problem for personnel in that grade of that position. The director shall make such a determination based upon whether, in accordance with criteria established by the Secretary, there is a significant pay-related staffing problem at that facility in any grade for a position. If the director determines that there is such a problem, or that such a problem is likely to exist in the near future, the Director shall provide for a wage survey in accordance with subsection (d)(3).

(3) The Under Secretary for Health may, to the extent necessary to carry out the purposes of subsection (d), modify any determination made by the director of a Department health-care facility with respect to adjusting the rates of basic pay applicable to covered positions. If the determination of the director would result in an adjustment in rates of basic pay applicable to covered positions, any action by the Under Secretary under the preceding sentence shall be made before the effective date of such pay adjustment. Upon such action by the Under Secretary, any adjustment shall take effect on the first day of the first pay period beginning after such action. The Secretary shall ensure that the Under Secretary establishes a mechanism for the timely exercise of the authority in this paragraph.

(4) Each director of a Department health-care facility shall provide to the Secretary, not later than July 31 each year, a report on staffing for covered positions at that facility. The report shall include the following:

(A) Information on turnover rates and vacancy rates for each covered position, including a comparison of those rates with the rates for the preceding three years.

(B) The director's findings concerning the review and evaluation of the facility's staffing situation, including whether there is, or is likely to be, in accordance with criteria established by the Secretary, a significant pay-related staffing problem at that facility for any covered position and, if so, whether a wage survey was conducted, or will be conducted with

respect to that position.

(C) In any case in which the director conducts such a wage survey during the period covered by the report, information describing the survey and any actions taken or not taken based on the survey, and the reasons for taking (or not taking) such actions.

(D) In any case in which the director conducts such a wage survey during the period covered by the report and makes adjustment in rates of basic pay applicable to one or more covered positions at the facility, information on the methodology used in making such adjustment or adjustments.

(E) In any case in which the director, after finding that there is, or is likely to be, in accordance with criteria established by the Secretary, a significant pay-related staffing problem at that facility for any covered position, determines not to conduct a wage survey with respect to that position, a statement of the reasons why the director did not conduct such a survey.

(5) Not later than September 30 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on staffing for covered positions at Department health care facilities. Each such report shall include the following:

(A) A summary and analysis of the information contained in the most recent reports submitted by facility directors under paragraph (4).

(B) The information for each such facility specified in paragraph (4).

(6)(A) Upon the request of an individual described in subparagraph (B) for a report provided under paragraph (4) with respect to a Department health-care facility, the Under Secretary for Health or the director of such facility shall provide to the individual the most current report for such facility provided under such paragraph.

(B) An individual described in this subparagraph is -

(i) an individual in a covered position at a Department health-care facility; or

(ii) a representative of the labor organization representing that individual who is designated by that individual to make the request.

(f) For the purposes of this section, the term "health-care facility" means a medical center, an independent outpatient clinic, or an independent domiciliary facility.

#### -SOURCE-

(Added Pub. L. 101-366, title I, Sec. 102(b), Aug. 15, 1990, 104 Stat. 431, Sec. 4141; renumbered Sec. 7451 and amended Pub. L. 102-40, title III, Sec. 301(b), (c), title IV, Sec. 401(c)(1)(A), (2), May 7, 1991, 105 Stat. 208, 238; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102-585, title III, Secs. 301(b)-303, 304(b), 307, Nov. 4, 1992, 106 Stat. 4951-4953; Pub. L. 103-446, title XII, Sec. 1201(c)(7), (e)(23), Nov. 2, 1994, 108 Stat. 4684, 4686; Pub. L. 104-110, title I, Sec. 101(i), Feb. 13, 1996, 110 Stat. 768; Pub. L. 106-419, title II, Sec. 201(a), Nov. 1, 2000, 114 Stat. 1838; Pub. L. 107-135, title I, Sec. 133, Jan. 23, 2002, 115 Stat. 2454; Pub. L. 111-163, title V, Sec. 501(a), title VI, Sec. 601(g), (h), (j), May 5, 2010, 124 Stat. 1157, 1170.)

-REFTEXT-

REFERENCES IN TEXT

Subsection (g), referred to in subsec. (c)(1), was repealed and subsec. (h), which did not relate to annual reports, was redesignated (g) by Pub. L. 106-419, title II, Sec. 201(a)(4), Nov. 1, 2000, 114 Stat. 1840.

Level IV of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5315 of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (d)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

-MISC1-

AMENDMENTS

2010 - Subsec. (c)(2). Pub. L. 111-163, Sec. 601(g), (h), substituted "level IV" for "level V" and inserted at end "The maximum rate of basic pay for a grade for the position of certified registered nurse anesthetist pursuant to an adjustment under subsection (d) may exceed the maximum rate otherwise provided in the preceding sentence."

Subsec. (d)(3)(F). Pub. L. 111-163, Sec. 601(j)(1), added subpar. (F).

Subsec. (e)(4)(D), (E). Pub. L. 111-163, Sec. 601(j)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (e)(6). Pub. L. 111-163, Sec. 601(j)(3), added par. (6).

Subsecs. (f), (g). Pub. L. 111-163, Sec. 501(a), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: "Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding any pay adjustments under the authority of subsection (d) effective during the 12 months preceding the submission of the report. Each such report shall set forth, by health-care facility, the percentage of such increases and, in any case in which no increase was made, the basis for not providing an increase."

2002 - Subsec. (d)(3)(A). Pub. L. 107-135, Sec. 133(1)(A), struck out "beginning rates of" before "compensation for corresponding health-care professionals" in two places.

Subsec. (d)(3)(B). Pub. L. 107-135, Sec. 133(1)(B), struck out "beginning rates of" before "compensation for corresponding health-care professionals".

Subsec. (d)(3)(C)(i). Pub. L. 107-135, Sec. 133(1)(C), struck out "beginning rates of" before "compensation" in introductory provisions and in subcl. (I).

Subsec. (d)(4). Pub. L. 107-135, Sec. 133(2), struck out "or at any other time that an adjustment in rates of pay is scheduled to take place under this subsection" after "paragraph (3)(B)" and "Whenever a director makes such a determination, the director shall within 10 days notify the Under Secretary for Health of the decision and the reasons for the decision." at end.

Subsec. (e)(4). Pub. L. 107-135, Sec. 133(3), struck out "grade in a" before "covered position" in subpar. (A), struck out "grade of a" before "covered position" and substituted "that position" for "that grade" in subpar. (B), and struck out "grade of a" before "covered position" in subpar. (D).

2000 - Subsec. (d)(1). Pub. L. 106-419, Sec. 201(a)(1)(A)(i), substituted "Subject to subsection (e), the rates" for "The rates" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 106-419, Sec. 201(a)(1)(A)(ii),

substituted "section 5303" for "section 5305" and inserted "and to be by the same percentage" after "to have the same effective date".

Subsec. (d)(2). Pub. L. 106-419, Sec. 201(a)(1)(B), substituted "Except as provided in paragraph (1)(A), such" for "Such" in second sentence.

Subsec. (d)(3)(B). Pub. L. 106-419, Sec. 201(a)(1)(C), inserted after first sentence "To the extent practicable, the director shall use third-party industry wage surveys to meet the requirements of the preceding sentence.", inserted before penultimate sentence "To the extent practicable, all surveys conducted pursuant to this subparagraph or subparagraph (A) shall include the collection of salary midpoints, actual salaries, lowest and highest salaries, average salaries, bonuses, incentive pays, differential pays, actual beginning rates of pay, and such other information needed to meet the purpose of this section.", and in penultimate sentence inserted "or published" after "survey is completed".

Subsec. (d)(3)(C)(iii). Pub. L. 106-419, Sec. 201(a)(1)(D), struck out cl. (iii) which read as follows: "The authority of the director to use such additional data under this subparagraph with respect to certified registered nurse anesthetists expires on January 1, 1998."

Subsec. (e). Pub. L. 106-419, Sec. 201(a)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

"Adjustments in rates of basic pay under subsection (d) may increase or reduce the rates of basic pay applicable to any grade of a covered position. In the case of such an adjustment that reduces the rates of pay for a grade, an employee serving at a Department health-care facility on the day before the effective date of that adjustment in a position affected by the adjustment may not (by reason of that adjustment) incur a reduction in the rate of basic pay applicable to that employee so long as the employee continues to serve in that covered position at that facility. If such an employee is subsequently promoted to a higher grade, or advanced to a higher step within the employee's grade, for which the rate of pay as so adjusted is lower than the employee's rate of basic pay on the day before the effective date of the promotion, the employee shall continue to be paid at a rate of basic pay not less than the rate of basic pay applicable to the employee before the promotion so long as the employee continues to serve in that covered position at that facility."

Subsec. (f). Pub. L. 106-419, Sec. 201(a)(3), substituted "March 1 of each year" for "February 1 of 1991, 1992, and 1993" and "subsection (d)" for "subsection (d)(1)(A)".

Subsecs. (g), (h). Pub. L. 106-419, Sec. 201(a)(4), redesignated subsec. (h) as (g) and struck out former subsec. (g) which directed that not later than Dec. 1 of 1991, 1992, and 1993, the Secretary was to submit to Congress a report regarding the exercise of authorities provided in this section for the preceding fiscal year and listed items to be included in report.

1996 - Subsec. (d)(3)(C)(iii). Pub. L. 104-110 substituted "January 1, 1998" for "April 1, 1995".

1994 - Subsec. (d)(3)(C)(i)(I). Pub. L. 103-446, Sec. 1201(e)(23), substituted "labor-market area" for "labor market area".

Subsec. (g)(1). Pub. L. 103-446, Sec. 1201(c)(7), substituted "Under Secretary for Health's actions" for "Chief Medical Director's actions".

1992 - Subsec. (a)(2)(B). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (a)(3). Pub. L. 102-585, Sec. 302, designated existing provisions as subpar. (A), substituted "Except as provided in

subparagraph (B), the rates" for "The rates", and added subpar. (B).

Subsec. (a)(4). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (b). Pub. L. 102-585, Sec. 301(b), substituted "five" for "four".

Subsec. (d)(1)(B). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (d)(3)(C). Pub. L. 102-585, Sec. 303(2), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (d)(3)(D). Pub. L. 102-585, Sec. 303(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Subsec. (d)(3)(E). Pub. L. 102-585, Sec. 303(1), redesignated subpar. (D) as (E).

Subsec. (d)(4). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

Subsec. (g)(9). Pub. L. 102-585, Sec. 304(b), added par. (9).

Subsec. (g)(10). Pub. L. 102-585, Sec. 307, added par. (10).

1991 - Pub. L. 102-40, Sec. 401(c)(1)(A), renumbered section 4141 of this title as this section.

Subsec. (a)(2)(B). Pub. L. 102-40, Sec. 401(c)(2)(A)(i), substituted "paragraphs (1) and (3) of section 7401" for "clauses (1) and (3) of section 4104".

Subsec. (a)(3). Pub. L. 102-40, Secs. 301(c), 401(c)(2)(A)(ii), substituted "7404" for "4107" and inserted before period at end "or chapter 53 of title 5".

Subsec. (a)(4). Pub. L. 102-40, Sec. 401(c)(2)(A)(iii), substituted "7452" for "4142".

Subsec. (b). Pub. L. 102-40, Sec. 401(c)(2)(B), substituted "7401(1)" for "4104(1)" and "7404(b)" for "4107(b)".

Subsec. (d)(1)(B). Pub. L. 102-40, Sec. 301(b)(1), inserted "or the Chief Medical Director, with respect to covered Regional and Central Office employees in that grade," before "determines".

Subsec. (d)(3)(C). Pub. L. 102-40, Sec. 301(b)(2)(B), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(3)(D). Pub. L. 102-40, Sec. 301(b)(2)(A), redesignated subpar. (C) as (D) and inserted "or Chief Medical Director" after "facility".

Subsec. (d)(4). Pub. L. 102-40, Sec. 301(b)(3), inserted ", or the Chief Medical Director with respect to Regional and Central Office employees," after "facility".

Subsec. (g)(8). Pub. L. 102-40, Sec. 401(c)(2)(C), substituted "7452(b)(2)" for "4142(b)(2)".

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by sections 301(b) to 303 and 304(b) of Pub. L. 102-585 effective with respect to first pay period beginning on or after end of six-month period beginning on Nov. 4, 1992, see section 308 of Pub. L. 102-585, set out as a note under section 7404 of this title.

#### EFFECTIVE DATE

Section 104 of Pub. L. 101-366, as amended by Pub. L. 102-40, title III, Sec. 301(e), May 7, 1991, 105 Stat. 208, provided that:

"(a) In General. - (1) Except as provided in subsection (b), section 101 [amending former section 4107 of this title and enacting provisions set out as a note under former section 4107 of

this title] and the amendments made by section 102 [enacting this section and section 4142 [now 7452] of this title and amending former sections 4104 and 4107 of this title] shall take effect on the date of enactment [Aug. 15, 1990].

"(2) The amendment made by section 103 [amending former section 4107 of this title] shall take effect on the first day of the first pay period beginning after April 1, 1991.

"(b) New Pay Rates. - The rates of basic pay established pursuant to section 4141 [now 7451] of title 38, United States Code, as added by section 102, shall take effect for covered positions (as defined in that section) with respect to the first pay period beginning on or after April 1, 1991."

#### SAVINGS PROVISION

Section 301(a) of Pub. L. 102-40 provided that: "Physician assistants and expanded-function dental auxiliaries shall continue to be paid after August 14, 1990, according to the Nurse Schedule in section 4107(b) of title 38 [former section 4107(b) of this title], United States Code, as in effect on August 14, 1990, until the effective date of a determination by the Secretary to convert those occupations to 'covered positions' and pay them pursuant to section 7451 of such title, as redesignated by section 401(c)."

#### PILOT PROGRAM TO STUDY INNOVATIVE RECRUITMENT TOOLS TO ADDRESS NURSING SHORTAGES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES

Pub. L. 108-422, title V, Sec. 501, Nov. 30, 2004, 118 Stat. 2395, provided that:

"(a) Pilot Program. - (1) Not later than 90 days after the date of the enactment of this Act [Nov. 30, 2004], the Secretary of Veterans Affairs shall designate a health care service region, or a section within such a region, in which health care facilities of the Department of Veterans Affairs are adversely affected by a shortage of qualified nurses.

"(2) The Secretary shall conduct a pilot program in the region or section designated under paragraph (1) to determine the effectiveness of the use of innovative human capital tools and techniques in the recruitment of qualified nurses for positions at Department health care facilities in such region or section and for the retention of nurses at such facilities. In carrying out the pilot program, the Secretary shall enter into a contract with a private sector entity for services under the pilot program for recruitment of qualified nurses.

"(b) Private Sector Recruitment Practices. - For purposes of the pilot program under this section, the Secretary shall identify and use recruitment practices that have proven effective for placing qualified individuals in positions that are difficult to fill due to shortages of qualified individuals or other factors. Recruitment practices to be reviewed by the Secretary for use in the pilot program shall include -

"(1) employer branding and interactive advertising strategies;

"(2) Internet technologies and automated staffing systems; and

"(3) the use of recruitment, advertising, and communication agencies.

"(c) Streamlined Hiring Process. - In carrying out the pilot program under this section, the Secretary shall, at health care facilities of the Department in the region or section in which the pilot program is conducted, revise procedures and systems for selecting and hiring qualified nurses to reduce the length of the hiring process. If the Secretary identifies measures to streamline and automate the hiring process that can only be implemented if



authorized by law, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives recommendations for such changes in law as may be necessary to enable such measures to be implemented.

"(d) Report. - Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the extent to which the pilot program achieved the goal of improving the recruitment and retention of nurses in Department of Veterans Affairs health care facilities."

#### REPORT ON REQUESTS FOR WAIVERS OF PAY REDUCTIONS FOR REEMPLOYED ANNUITANTS TO FILL NURSE POSITIONS

Pub. L. 107-135, title I, Sec. 103, Jan. 23, 2002, 115 Stat. 2450, required the Secretary of Veterans Affairs to submit to Congress not later than March 28 of 2002 and 2003 a report on requests, made during the fiscal year preceding such report, for waivers of pay reductions for reemployed annuitants to fill nurse positions.

#### NATIONAL COMMISSION ON VA NURSING

Pub. L. 107-135, title I, subtitle D (Secs. 141-146), Jan. 23, 2002, 115 Stat. 2454, established in the Department of Veterans Affairs the "National Commission on VA Nursing", directed the Commission, not later than two years after its first meeting, to report to Congress on legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel by the Department and the future of the nursing profession within the Department, and provided for the termination of the Commission 90 days after the date of the submission of its report.

#### REPORT ON NURSE LOCALITY PAY

Pub. L. 105-368, title IX, Sec. 905, Nov. 11, 1998, 112 Stat. 3361, provided that:

"(a) Report Required. - (1) Not later than February 1, 1999, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report assessing the system of locality-based pay for nurses established under the Department of Veterans Affairs Nurse Pay Act of 1990 (Public Law 101-366) and now set forth in section 7451 of title 38, United States Code.

"(2) The Secretary shall submit with the report under paragraph (1) a copy of the report on the locality pay system prepared by the contractor pursuant to a contract with Systems Flow, Inc., that was entered into on May 22, 1998.

"(b) Matters To Be Included. - The report of the Secretary under subsection (a)(1) shall include the following:

"(1) An assessment of the effects of the locality-based pay system, including information, shown by facility and grade level, regarding the frequency and percentage increases, if any, in the rate of basic pay under that system of nurses employed in the Veterans Health Administration.

"(2) An assessment of the manner in which that system is being applied.

"(3) Plans and recommendations of the Secretary for administrative and legislative improvements or revisions to the locality pay system.

"(4) An explanation of the reasons for any decision not to adopt any recommendation in the report referred to in subsection (a)(2).

"(c) Updated Report. - Not later than February 1, 2000, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report updating the report submitted under subsection (a)(1)."

#### RATIFICATION OF ACTIONS DURING PERIOD OF EXPIRED AUTHORITY

Any action taken by Secretary of Veterans Affairs before Feb. 13, 1996, under provision of law amended by title I of Pub. L. 104-110 that was taken during period beginning on date on which authority of Secretary under such provision of law expired and ending on Feb. 13, 1996, considered to have same force and effect as if such amendment had been in effect at time of that action, see section 103 of Pub. L. 104-110, set out as a note under section 1710 of this title.

#### NURSING PERSONNEL QUALIFICATION STANDARDS

Section 305 of Pub. L. 102-585 provided that:

"(a) Revision. - The Secretary of Veterans Affairs shall conduct a review of the qualification standards used for nursing personnel at Department health-care facilities and the relationship between those standards and the compression of nursing personnel in the existing intermediate and senior grades. Based upon that review, the Secretary shall revise those qualification standards -

"(1) to reflect the five grade levels for nursing personnel under the Nurse Schedule [see 38 U.S.C. 7404(b)(1)], as amended by section 301; and

"(2) to reduce the compression of nursing personnel in the existing intermediate and senior grades.

"(b) Deadline For Prescribing Standards. - The Secretary shall prescribe revised qualification standards for nursing personnel pursuant to subsection (a) not later than six months after the date of the enactment of this Act [Nov. 4, 1992].

"(c) Report. - The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's findings and actions under this section. The report shall be submitted not later than six months after the date on which revised qualification standards for nursing personnel are prescribed pursuant to subsection (b)."

#### REPORT ON PAY FOR CHIEF NURSE POSITION

Section 306 of Pub. L. 102-585 provided that:

"(a) Review. - The Secretary of Veterans Affairs shall conduct a review of -

"(1) the process for determining the rate of basic pay applicable to the Chief Nurse position at Department of Veterans Affairs health-care facilities; and

"(2) the relationship between the rate of such basic pay and the rate of basic pay applicable to nurses in positions subordinate to the Chief Nurse at the respective Department facilities.

The review shall include an assessment of the adequacy of that process in determining an equitable pay rate for the Chief Nurse position, including an assessment of the accuracy of data collected in the survey process and the difficulties in obtaining accurate data.

"(b) Report. - The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the review and assessment conducted under subsection (a). To the extent that the review discloses difficulties in obtaining accurate data in the survey process with respect to the Chief Nurse position at Department facilities, the Secretary shall include in

the report recommendations for corrective action. The Secretary shall also include in the report (1) a listing of the salary differential (expressed as a percentage) between the Chief Nurse at a facility and the highest paid nurse (excluding certified registered nurse anesthetists) serving in a position subordinate to the Chief Nurse, and (2) an analysis of such data. The report shall be submitted not later than 12 months after the date of the enactment of this Act [Nov. 4, 1992]."

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

38 USC Sec. 7452

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7452. Nurses and other health-care personnel: administration of pay

-STATUTE-

(a)(1) Regulations prescribed under section 7451(a) of this title shall provide that whenever an employee in a covered position is given a new duty assignment which is a promotion, the rate of basic pay of that employee shall be increased at least one step increment in that employee's grade.

(2) A nurse serving in a head nurse position shall while so serving receive basic pay at a rate two step increments above the rate that would otherwise be applicable to the nurse. If such a nurse is in the highest or next-to-highest step for that nurse's grade, the preceding sentence shall be applied by extrapolation to create additional steps only for the purposes of this paragraph. The limitation in section 7451(c)(1) of this title shall not apply with respect to increased basic pay under this paragraph.

(3) An employee in a covered position who is promoted to the next higher grade shall be paid in that grade at a step having a rate of basic pay that is greater than the rate of basic pay applicable to the employee in a covered position on the day before the effective date of the promotion.

(b)(1) Under regulations which the Secretary prescribes for the administration of this section, the director of a Department health-care facility (A) shall pay a cash bonus (in an amount to be determined by the director not to exceed \$2,000) to an employee in a covered position at that facility who becomes certified in a specialty recognized by the Department, and (B) may provide such a bonus to an employee in such a position who has demonstrated both exemplary job performance and exemplary job achievement. The authority of the Secretary under this subsection is in addition to any other authority of the Secretary to provide job performance incentives.

(2) The Secretary shall include in the annual report under

section 7451(g) (!1) of this title a discussion of the use during the period covered by the report of the payment of bonuses under this subsection and other job performance incentives available to the Secretary.

(c)(1) The Secretary shall provide (in regulations prescribed for the administration of this section) that the director of a Department health-care facility, in making a new appointment of a person under section 7401(1) of this title as an employee in a covered position for employment at that facility, may make that appointment at a rate of pay described in paragraph (3) without being subject to a requirement for prior approval at any higher level of authority within the Department in any case in which the director determines that it is necessary to do so in order to obtain the services of employees in covered positions in cases in which vacancies exist at that health-care facility.

(2) Such a determination may be made by the director of a health-care facility only in order to recruit employees in covered positions with specialized skills, especially employees with skills which are especially difficult or demanding.

(3) A rate of pay referred to in paragraph (1) is a rate of basic pay in excess of the minimum rate of basic pay applicable to the grade in which the appointment is made (but not in excess of the maximum rate of basic pay for that grade).

(4) Whenever the director of a health-care facility makes an appointment described in paragraph (1) without prior approval at a higher level of authority within the Department, the director shall

(A) state in a document the reasons for employing the employee in a covered position at a rate of pay in excess of the minimum rate of basic pay applicable to the grade in which the employee is appointed (and retain that document on file); and

(B) in the first budget documents submitted to the Secretary by the director after the employee is employed, include documentation for the need for such increased rates of basic pay described in clause (A).

(5) Whenever the director of a health-care facility makes an appointment described in paragraph (1) on the basis of a determination described in paragraph (2), the covered employee appointed may continue to receive pay at a rate higher than that which would otherwise be applicable to that employee only so long as the employee continues to serve in a position requiring the specialized skills with respect to which the determination was made.

(d) Whenever the director of a health-care facility makes an appointment described in subsection (c)(1), the director may (without a regard to any requirement for prior approval at any higher level of authority within the Department) increase the rate of pay of other employees in the same covered position at that facility who are in the grade in which the appointment is made and are serving in a position requiring the specialized skills with respect to which the determination under subsection (c)(2) concerning the appointment was made. Any such increase shall continue in effect with respect to any employee only so long as the employee continues to serve in such a position.

(e) An employee in a covered position employed under section 7401(1) of this title who (without a break in employment) transfers from one Department health-care facility to another may not be reduced in grade or step within grade (except pursuant to a disciplinary action otherwise authorized by law) if the duties of

the position to which the employee transfers are similar to the duties of the position from which the employee transferred. The rate of basic pay of such employee shall be established at the new health-care facility in a manner consistent with the practices at that facility for an employee of that grade and step, except that in the case of an employee whose transfer (other than pursuant to a disciplinary action otherwise authorized by law) to another health-care facility is at the request of the Secretary, the Secretary may provide that for at least the first year following such transfer the employee shall be paid at a rate of basic pay up to the rate applicable to such employee before the transfer, if the Secretary determines that such rate of pay is necessary to fill the position. Whenever the Secretary exercises the authority under the preceding sentence relating to the rate of basic pay of a transferred employee, the Secretary shall, in the next annual report required under section 7451(g) (!1) of this title, provide justification for doing so.

(f) In this section, the term "covered position" has the meaning given that term in section 7451 of this title.

(g)(1) In order to recruit and retain highly qualified Department nurse executives, the Secretary may, in accordance with regulations prescribed by the Secretary, pay special pay to the nurse executive at each location as follows:

- (A) Each Department health care facility.
- (B) The Central Office.

(2) The amount of special pay paid to a nurse executive under paragraph (1) shall be not less than \$10,000 or more than \$100,000.

(3) The amount of special pay paid to a nurse executive under paragraph (1) shall be based on factors such as the grade of the nurse executive position, the scope and complexity of the nurse executive position, the personal qualifications of the nurse executive, the characteristics of the health care facility concerned, the nature and number of specialty care units at the health care facility concerned, demonstrated difficulties in recruitment and retention of nurse executives at the health care facility concerned, and such other factors as the Secretary considers appropriate.

(4) Special pay paid to a nurse executive under paragraph (1) shall be in addition to any other pay (including basic pay) and allowances to which the nurse executive is entitled, and shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits, but shall not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.

**-SOURCE-**

(Added Pub. L. 101-366, title I, Sec. 102(b), Aug. 15, 1990, 104 Stat. 435, Sec. 4142; renumbered Sec. 7452 and amended Pub. L. 102-40, title III, Sec. 301(d), title IV, Sec. 401(c)(1)(A), (3), May 7, 1991, 105 Stat. 208, 238; Pub. L. 102-585, title III, Sec. 304(a), Nov. 4, 1992, 106 Stat. 4952; Pub. L. 108-445, Sec. 5, Dec. 3, 2004, 118 Stat. 2645; Pub. L. 111-163, title VI, Sec. 601(i), May 5, 2010, 124 Stat. 1170.)

**-REFTEXT-**

**REFERENCES IN TEXT**

Section 7451(g) of this title, referred to in subsecs. (b)(2) and (e), was repealed and subsec. (h) of section 7451 was redesignated (g) by Pub. L. 106-419, title II, Sec. 201(a)(4), Nov. 1, 2000, 114 Stat. 1840.

-MISC1-

#### AMENDMENTS

2010 - Subsec. (g)(2). Pub. L. 111-163 substituted "\$100,000" for "\$25,000".

2004 - Subsec. (g). Pub. L. 108-445 added subsec. (g).

1992 - Subsec. (e). Pub. L. 102-585 inserted before period at end ", except that in the case of an employee whose transfer (other than pursuant to a disciplinary action otherwise authorized by law) to another health-care facility is at the request of the Secretary, the Secretary may provide that for at least the first year following such transfer the employee shall be paid at a rate of basic pay up to the rate applicable to such employee before the transfer, if the Secretary determines that such rate of pay is necessary to fill the position. Whenever the Secretary exercises the authority under the preceding sentence relating to the rate of basic pay of a transferred employee, the Secretary shall, in the next annual report required under section 7451(g) of this title, provide justification for doing so".

1991 - Pub. L. 102-40, Sec. 401(c)(1)(A), renumbered section 4142 of this title as this section.

Subsec. (a)(1). Pub. L. 102-40, Sec. 401(c)(3)(A)(i), substituted "7451(a)" for "4141(a)".

Subsec. (a)(2). Pub. L. 102-40, Sec. 401(c)(3)(A)(ii), substituted "7451(c)(1)" for "4141(c)(1)".

Subsec. (a)(3). Pub. L. 102-40, Sec. 301(d), substituted "paid" for "appointed".

Subsec. (b)(2). Pub. L. 102-40, Sec. 401(c)(3)(B), substituted "7451(g)" for "4141(g)".

Subsec. (c)(1). Pub. L. 102-40, Sec. 401(c)(3)(C), substituted "7401(1)" for "4104(1)".

Subsec. (e). Pub. L. 102-40, Sec. 401(c)(3)(C), substituted "7401(1)" for "4104(1)".

Subsec. (f). Pub. L. 102-40, Sec. 401(c)(3)(D), substituted "7451" for "4141".

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-585 effective with respect to first pay period beginning on or after end of six-month period beginning on Nov. 4, 1992, see section 308 of Pub. L. 102-585, set out as a note under section 7404 of this title.

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

38 USC Sec. 7453

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7453. Nurses: additional pay

-STATUTE-

(a) In addition to the rate of basic pay provided for nurses, a full-time nurse or part-time nurse shall receive additional pay as provided by this section.

(b) A nurse performing service, any part of which is within the period commencing at 6 postmeridian and ending at 6 antemeridian, shall receive additional pay for each hour of such service at a rate equal to 10 percent of the nurse's hourly rate of basic pay if at least four hours of such service fall between 6 postmeridian and 6 antemeridian. When less than four hours of such service fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of service performed between those hours.

(c) A nurse performing service, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of such service at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

(d) A nurse performing service on a holiday designated by Federal statute or Executive order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two hours in duration.

(e)(1) A nurse performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight consecutive hours, shall receive overtime pay for each hour of such additional service. The overtime rates shall be one and one-half times such nurse's hourly rate of basic pay.

(2) For the purposes of this subsection, overtime must be of at least 15 minutes duration in a day to be creditable for overtime pay.

(3) Compensatory time off in lieu of pay for service performed under the provisions of this subsection shall not be permitted, except as voluntarily requested in writing by the nurse in question.

(4) Any excess service performed under this subsection on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration.

(5) For the purposes of this subsection, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless -

(A) such travel occurs during such nurse's period of service;

or

(B) such travel -

(i) involves the performance of services while traveling,

(ii) is incident to travel that involves the performance of services while traveling,

(iii) is carried out under arduous conditions as determined by the Secretary, or

(iv) results from an event which could not be scheduled or controlled administratively.

(f) For the purpose of computing the additional pay provided by subsection (b), (c), (d), or (e), a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by 2,080.

(g) When a nurse is entitled to two or more forms of additional

pay under subsection (b), (c), (d), or (e) for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in subsection (e) shall be payable for overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under subsection (d) for such service.

(h) A nurse who is officially scheduled to be on call outside such nurse's regular hours or on a holiday designated by Federal statute or Executive order shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 percent of the hourly rate for excess service as provided in subsection (e).

(i) Any additional pay paid pursuant to this section shall not be considered as basic pay for the purposes of the following provisions of title 5 (and any other provision of law relating to benefits based on basic pay):

- (1) Subchapter VI of chapter 55.
- (2) Section 5595.
- (3) Chapters 81, 83, 84, and 87.

(j)(1) Notwithstanding any other provision of law and subject to paragraph (2), the Secretary may increase the rates of additional pay authorized under subsections (b) through (h) if the Secretary determines that it is necessary to do so in order to obtain or retain the services of nurses.

(2) An increase under paragraph (1) in rates of additional pay -

(A) may be made at any specific Department health-care facility in order to provide nurses, or any category of nurses, at such facility additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Department health-care facility (based upon a reasonably representative sampling of such non-Federal facilities); and

(B) may be made on a nationwide, local, or other geographic basis if the Secretary finds that such an increase is justified on the basis of a review of the need for such increase (based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved).

#### -SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 232; amended Pub. L. 103-446, title XII, Sec. 1201(e)(24), (g)(6), Nov. 2, 1994, 108 Stat. 4686, 4687; Pub. L. 111-163, title VI, Sec. 601(k)(1), May 5, 2010, 124 Stat. 1171.)

#### -MISC1-

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(e) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

##### AMENDMENTS

2010 - Subsec. (a). Pub. L. 111-163, Sec. 601(k)(1)(A), substituted "a full-time nurse or part-time nurse" for "a nurse".

Subsec. (b). Pub. L. 111-163, Sec. 601(k)(1)(B), struck out "on a tour of duty" after "performing service" and substituted "hour of such service" for "hour of service on such tour", "at least four



hours of such service" for "at least four hours of such tour", and "less than four hours of such service" for "less than four hours of such tour".

Subsec. (c). Pub. L. 111-163, Sec. 601(k)(1)(C), struck out "on a tour of duty" after "performing service" and substituted "such service" for "service on such tour".

Subsec. (e)(1). Pub. L. 111-163, Sec. 601(k)(1)(D)(i), substituted "eight consecutive hours" for "eight hours in a day".

Subsec. (e)(5)(A). Pub. L. 111-163, Sec. 601(k)(1)(D)(ii), substituted "period of service" for "tour of duty".

1994 - Subsecs. (f), (g). Pub. L. 103-446, Sec. 1201(e)(24), substituted "subsection (b), (c), (d), or (e)" for "subsections (b), (c), (d), or (e)".

Subsec. (i)(3). Pub. L. 103-446, Sec. 1201(g)(6), struck out "of title 5" before period at end.

-End-

-CITE-

38 USC Sec. 7454

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7454. Physician assistants and other health care professionals: additional pay

-STATUTE-

(a) Physician assistants and expanded-function dental auxiliaries shall be entitled to additional pay on the same basis as provided for nurses in section 7453 of this title.

(b)(1) When the Secretary determines it to be necessary in order to obtain or retain the services of individuals in positions listed in section 7401(3) of this title, the Secretary may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in section 7453 of this title.

(2) Health care professionals employed in positions referred to in paragraph (1) shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.

(3) Employees appointed under section 7408 of this title performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay in addition to the rate of basic pay provided such employees for each hour of service on such tour at a rate equal to 25 percent of such employee's hourly rate of basic pay.

(c) The Secretary shall prescribe by regulation standards for compensation and payment under this section.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 234; amended Pub. L. 107-135, title I, Sec. 121(a), Jan. 23, 2002, 115 Stat. 2450; Pub. L. 108-170, title III, Secs. 301(d), 303(a), Dec. 6, 2003, 117 Stat. 2057, 2058; Pub. L. 111-163, title

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(f) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010 - Subsec. (b)(3). Pub. L. 111-163 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Employees appointed under section 7408 of this title shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title."

2003 - Subsec. (b)(1). Pub. L. 108-170, Sec. 301(d), substituted "individuals in positions listed in section 7401(3) of this title," for "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, or occupational therapists,".

Subsec. (b)(3). Pub. L. 108-170, Sec. 303(a), added par. (3).

2002 - Subsec. (b). Pub. L. 107-135 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-170, title III, Sec. 303(b), Dec. 6, 2003, 117 Stat. 2058, provided that: "The amendment made by subsection (a) [amending this section] shall take effect with respect to the first pay period beginning on or after January 1, 2004."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-135, title I, Sec. 121(b), Jan. 23, 2002, 115 Stat. 2450, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to pay periods beginning on or after the date of the enactment of this Act [Jan. 23, 2002]."

-End-

-CITE-

38 USC Sec. 7455 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7455. Increases in rates of basic pay

-STATUTE-

(a)(1) Subject to subsections (b), (c), and (d), when the Secretary determines it to be necessary in order to obtain or retain the services of persons described in paragraph (2), the Secretary may increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations. Any increase in such rates of basic pay -

(A) may be made on a nationwide basis, local basis, or other geographic basis; and

(B) may be made -

(i) for one or more of the grades listed in the schedules in subsection (b)(1) of section 7404 of this title;

(ii) for one or more of the health personnel fields within such grades; or

(iii) for one or more of the grades of the General Schedule under section 5332 of title 5.

(2) Paragraph (1) applies to the following:

(A) Individuals employed in positions listed in paragraphs (1) and (3) of section 7401 of this title.

(B) Health-care personnel who -

(i) are employed in the Administration (other than administrative, clerical, and physical plant maintenance and protective services employees);

(ii) are paid under the General Schedule pursuant to section 5332 of title 5;

(iii) are determined by the Secretary to be providing either direct patient-care services or services incident to direct patient-care services; and

(iv) would not otherwise be available to provide medical care and treatment for veterans.

(C) Employees who are Department police officers providing services under section 902 of this title.

(b) Increases in rates of basic pay may be made under subsection (a) only in order -

(1) to provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of personnel at non-Federal facilities in the same labor market;

(2) to achieve adequate staffing at particular facilities; or

(3) to recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

(c)(1) Subject to paragraph (2), the amount of any increase under subsection (a) in the minimum rate for any grade may not (except in the case of nurse anesthetists, licensed practical nurses, licensed vocational nurses, nursing positions otherwise covered by title 5, pharmacists, and licensed physical therapists) exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 of title 5 or similar provision of law) for the grade or level by more than 30 percent.

(2) No rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule.

(d)(1) In the exercise of the authority provided in subsection (a) with respect to personnel described in subparagraph (B) or (C) of paragraph (2) of that subsection to increase the rates of basic pay for any category of personnel not appointed under subchapter I, the Secretary shall, not less than 45 days before the effective date of a proposed increase, notify the President of the Secretary's intention to provide such an increase.

(2) Such a proposed increase shall not take effect if, before the effective date of the proposed increase, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval.

(3) If, before that effective date, the President approves such increase, the Secretary may advance the effective date to any date not earlier than the date of the President's approval.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 234; amended Pub. L. 102-83, Sec. 2(c)(7), Aug. 6, 1991, 105 Stat. 402; Pub. L. 102-405, title II, Sec. 201, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 106-419, title II, Sec. 203, Nov. 1, 2000, 114 Stat. 1841; Pub. L. 111-163, title VI, Sec. 601(l), May 5, 2010, 124 Stat. 1172.)

-REFTEXT-

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5315 of Title 5, Government Organization and Employees.

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(g) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010 - Subsec. (c). Pub. L. 111-163 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(c)(1) The amount of any increase under subsection (a) in the maximum rate for any grade may not (except in the case of nurse anesthetists, pharmacists, and licensed physical therapists) exceed by two times the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Under Secretary for Health.

"(2) Whenever the amount of an increase under subsection (a) results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under paragraph (1), the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof."

2000 - Subsec. (c)(1). Pub. L. 106-419 inserted ", pharmacists," after "anesthetists".

1992 - Subsec. (c). Pub. L. 102-405, Sec. 302(c)(1), substituted "Under Secretary for Health" for "Chief Medical Director" in par. (1).

Pub. L. 102-405, Sec. 201, designated existing provisions as par. (1), inserted "by two times" after first reference to "exceed", and added par. (2).

1991 - Subsec. (a)(2)(C). Pub. L. 102-83 substituted "902" for "218".

-EXEC-

EX. ORD. NO. 12797. REVIEW OF INCREASES IN RATES OF BASIC PAY FOR CERTAIN EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS AND OTHER AGENCIES

Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7455(d)(2)-(3) of title 38, United States Code, in order to establish procedures for review of proposed increases in the rates of basic pay of certain employees of the Department of Veterans Affairs and of other agencies, it is hereby ordered as follows:

Section 1. The Director of the Office of Personnel Management is designated to exercise the authority vested in the President by section 7455(d)(2)-(3) of title 38, United States Code, to review and approve or disapprove the increases in rates of basic pay proposed by the Secretary of Veterans Affairs and to provide the appropriate committees of the Congress with a written statement of the reasons for any such disapproval.

Sec. 2. In exercising this authority, the Director of the Office of Personnel Management shall assure that any increases in basic pay proposed by the Secretary of Veterans Affairs are in the best interest of the Federal Government, do not exceed the amounts authorized by section 7455, and are made only to:

(1) Provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;

(2) Achieve adequate staffing at particular facilities; or

(3) Recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

Sec. 3. The Secretary of Veterans Affairs shall provide to the Director of the Office of Personnel Management such information as the Director may request in order to carry out the responsibilities delegated by this order.

Sec. 4. The Director of the Office of Personnel Management shall provide the Secretary of Veterans Affairs with a copy of any written statement provided to the appropriate committees of the Congress that sets forth the reasons for disapproval of any proposed increase in rates of basic pay under this order.

Sec. 5. In the case of any other law authorizing another agency to use the authority provided by section 7455 of title 38, United States Code, the Director of the Office of Personnel Management shall exercise the same authority in the same manner as provided for with respect to section 7455 under sections 1 through 4 of this order, and the head of such other agency shall provide information requested by the Director as provided for in section 3 of this order.

Sec. 6. Executive Order No. 12438 of August 23, 1983, is revoked.

Sec. 7. This order shall be effective upon publication in the Federal Register.

George Bush.

-End-

-CITE-

38 USC Sec. 7456

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7456. Nurses: special rules for weekend duty

-STATUTE-

(a) Subject to subsection (b), if the Secretary determines it to be necessary in order to obtain or retain the services of nurses at any Department health-care facility, the Secretary may provide, in the case of nurses appointed under this chapter and employed at such facility, that such nurses who work two regularly scheduled 12-hour tours of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 40-hour basic workweek.

(b)(1) Basic and additional pay for a nurse who is considered under subsection (a) to have worked a full 40-hour basic workweek shall be subject to paragraphs (2) and (3).

(2) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled 12-hour tour of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be derived by dividing the nurse's annual rate of basic pay by 1,248.

(3)(A) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled two 12-hour tours of duty is entitled to overtime pay under section 7453(e) of this title, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a Saturday or Sunday or in excess of 24 hours within the period commencing at midnight Friday and ending at midnight the following Sunday.

(B) Except as provided in subparagraph (C), a nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 12-hour tour of duty.

(C) If the Secretary determines it to be further necessary in order to obtain or retain the services of nurses at a particular facility, a nurse to whom this paragraph is applicable who performs service in excess of such nurse's regularly scheduled two 12-hour tours of duty may be paid overtime pay under section 7453(e) of this title, or other applicable law, for all or part of the hours of officially ordered or approved service performed by such nurse in excess of 40 hours during an administrative workweek.

(c) The Secretary shall prescribe regulations for the implementation of this section.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 235; amended Pub. L. 111-163, title VI, Sec. 602(b), May 5, 2010, 124 Stat. 1173.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(h) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010 - Subsecs. (c), (d). Pub. L. 111-163 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: "A nurse described in subsection (b)(1) who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour

tour of duty shall be charged for such leave at a rate of five hours of leave for three hours of absence."

-End-

-CITE-

38 USC Sec. 7456A

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7456A. Nurses: alternate work schedules

-STATUTE-

(a) Applicability. - This section applies to registered nurses appointed under this chapter.

(b) 72/80 Work Schedule. - (1)(A) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work six regularly scheduled 12-hour tours of duty within a 14-day period shall be considered for all purposes to have worked a full 80-hour pay period.

(B) A nurse who works under the authority in subparagraph (A) shall be considered a 0.90 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) to have worked a full 80-hour pay period shall be subject to subparagraphs (B) and (C).

(B) The hourly rate of basic pay for a nurse covered by this paragraph for service performed as part of a regularly scheduled 36-hour tour of duty within the work week shall be derived by dividing the nurse's annual rate of basic pay by 1,872.

(C) The Secretary shall pay overtime pay to a nurse covered by this paragraph who -

(i) performs a period of service in excess of such nurse's regularly scheduled 36-hour tour of duty within an administrative work week;

(ii) for officially ordered or approved service, performs a period of service in excess of 8 hours on a day other than a day on which such nurse's regularly scheduled 12-hour tour of duty falls;

(iii) performs a period of service in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty work week; or

(iv) performs a period of service in excess of 40 hours during an administrative work week.

(D) The Secretary may provide a nurse to whom this subsection applies with additional pay under section 7453 of this title for any period included in a regularly scheduled 12-hour tour of duty.

(3) A nurse who works a work schedule described in this subsection who is absent on approved sick leave or annual leave

during a scheduled 12-hour tour of duty shall be charged for such leave at a rate of ten hours of leave for every nine hours of absence.

(c) Holiday Pay. - A nurse working a work schedule under subsection (b) that includes a holiday designated by law or Executive order shall be eligible for holiday pay under section 7453(d) of this title for any service performed by the nurse on such holiday under such section.

(d) 9-Month Work Schedule for Certain Nurses. - (1) The Secretary may authorize a registered nurse appointed under section 7405 of this title, with the nurse's written consent, to work full time for nine months with 3 months off duty, within a fiscal year, and be paid at 75 percent of the full-time rate for such nurse's grade for each pay period of such fiscal year.

(2) A nurse who works under the authority in paragraph (1) shall be considered a 0.75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(3) Work under this subsection shall be considered part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

(4) A nurse who works under the authority in paragraph (1) shall be considered a full-time employee for purposes of chapter 89 of title 5.

(e) Notification of Modification of Benefits. - The Secretary shall provide each employee with respect to whom an alternate work schedule under this section may apply written notice of the effect, if any, that the alternate work schedule will have on the employee's health care premium, retirement, life insurance premium, probationary status, or other benefit or condition of employment. The notice shall be provided not later than 14 days before the employee consents to the alternate work schedule.

(f) Regulations. - The Secretary shall prescribe regulations to carry out this section.

-SOURCE-

(Added Pub. L. 108-445, Sec. 4(a)(1), Dec. 3, 2004, 118 Stat. 2643; amended Pub. L. 111-163, title VI, Sec. 602(c), May 5, 2010, 124 Stat. 1173.)

-MISC1-

AMENDMENTS

2010 - Subsec. (b). Pub. L. 111-163, Sec. 602(c)(2)(A), substituted "72/80" for "36/40" in heading.

Subsec. (b)(1)(A). Pub. L. 111-163, Sec. 602(c)(1), substituted "six regularly scheduled 12-hour tours of duty within a 14-day period shall be considered for all purposes to have worked a full 80-hour pay period." for "three regularly scheduled 12-hour tours of duty within a work week shall be considered for all purposes to have worked a full 40-hour basic work week."

Subsec. (b)(2)(A). Pub. L. 111-163, Sec. 602(c)(2)(B), substituted "80-hour pay period" for "40-hour basic work week".

Subsec. (b)(3). Pub. L. 111-163, Sec. 602(c)(2)(C), struck out "regularly" before "scheduled 12-hour tour".

-End-

-CITE-



-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7457. On-call pay

-STATUTE-

(a) The Secretary may pay an employee to whom this section applies pay at the rate provided in section 7453(h) of this title except for such time as the employee may be called back to work.

(b) This section applies to an employee who meets each of the following criteria:

(1) The employee is employed in a position listed in paragraph (3) of section 7401 of this title or meets the criteria specified in clauses (i), (ii), and (iii) of section 7455(a)(2)(B) of this title.

(2) The employee is employed in a work unit for which on-call premium pay is authorized.

(3) The employee is officially scheduled to be on call outside such employee's regular hours or on a holiday designated by Federal statute or Executive order.

(c) An employee who is eligible for on-call pay under subsection (a) and who was receiving standby premium pay pursuant to section 5545 of title 5 on May 20, 1988, shall, as long as such employee is employed in the same position and work unit and remains eligible for such standby pay, receive pay for any period of on-call duty at the rate equal to the greater of -

(1) the rate of pay which such employee would receive if being paid the rate of standby pay pursuant to such section that such individual would be entitled to receive if such individual were not scheduled to be on call instead, or

(2) the rate of pay which such employee is entitled to receive including on-call premium pay described in subsection (a).

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(4), May 7, 1991, 105 Stat. 236.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(j) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

-End-

-CITE-

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7458. Recruitment and retention bonus pay

-STATUTE-

(a)(1) In order to recruit and retain registered nurses, the Secretary may enter into agreements under this section. Such an agreement may be entered into with any registered nurse who is employed at, or who agrees to accept employment with the Department at, a Department health-care facility that is designated by the Secretary as a health-care facility with a significant shortage in registered nurses in any clinical service.

(2) A registered nurse entering into an agreement under this section shall agree to remain employed by the Department as a registered nurse for a period of time to be specified in the agreement and to serve during that period in a specific health-care facility that is designated by the Secretary as a health-care facility with a significant shortage of registered nurses in that nurse's clinical service. Such period may not be less than two years or more than four years. Such employment during such period may be on a full-time basis or a part-time basis, as specified in the agreement. Part-time employment as specified in such an agreement may not be less than half-time.

(b)(1) The Secretary shall pay to any nurse entering into an agreement under this section bonus pay in an amount specified in the agreement. The amount of such bonus pay may not exceed -

- (A) \$2,000 per year, in the case of an agreement for two years,
- (B) \$3,000 per year, in the case of an agreement for three years, and
- (C) \$4,000 per year, in the case of an agreement for four years.

(2) In the case of an agreement for employment on less than a full-time basis, the amount of bonus pay shall be pro-rated accordingly.

(c)(1) Except as provided in paragraph (2) of this subsection, a bonus under this section shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement.

(2)(A) The Secretary may make a payment in an amount not in excess of 25 percent of the total bonus in a lump sum at the time that the period of obligated service commences under the agreement.

(B) If the Secretary makes a lump-sum payment under subparagraph (A) of this paragraph, the remaining balance of the bonus shall be paid in equal installments after each year of service is completed throughout the period of obligated service specified in the agreement.

(d)(1) A bonus paid to any individual under this section shall be in addition to any pay or allowance to which the individual is entitled.

(2) The amount of a bonus paid under this section shall not be considered to be basic pay for the purposes of sections 5551, 5552, and 5595 of title 5, chapters 81, 83, 84, and 87 of such title, or any other provision of law creating an entitlement to benefits based on basic pay.

(e) At least once each year the Secretary, upon the recommendation of the Under Secretary for Health, shall determine the specific health-care facilities and clinical services, if any,

as to which there are significant problems with respect to the recruitment and retention of registered nurses. Upon making any such determination, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and the House of Representatives of the determination and the basis for the determination.

(f) The Secretary may enter into agreements under this section with individuals in a health profession other than nursing (and other than a health profession for which special pay may be provided under subchapter III) if the Secretary determines that there are significant problems with respect to recruitment and retention of employees in that health profession. The Secretary's authority to enter into any such agreement under this section, and such agreement, shall be subject to the provisions of this section in the same manner as are the authority to enter into an agreement under this section with a registered nurse and such an agreement.

(g)(1) Except as provided in paragraph (2) of this subsection, an individual who voluntarily, or because of misconduct, fails to perform services as assigned by the Secretary for the period of obligated service provided in an agreement under this section shall refund to the United States the amount by which the total amount of bonus payments received by that individual under this section exceeds the amount that such individual would have received under an agreement under this section to serve for the period of obligated service actually served (as determined at the time the agreement is entered into). If the period actually served is less than two years, the amount to be refunded is the entire amount paid to the individual.

(2) An individual shall not be required to make a refund under paragraph (1) of this subsection if the Secretary determines, in accordance with regulations prescribed under subsection (h) of this section, that the individual's failure to perform services for the period of obligated service is due to circumstances (not including separation for cause) beyond the control of the individual.

(3) An obligation to refund any portion of a bonus payment under this subsection is, for all purposes, a debt owed to the United States.

(4) The provisions of this subsection and the specific amounts that the individual could be required to refund shall be disclosed to the individual at the time the agreement is entered into and shall be clearly set forth in the contract.

(h) The Secretary shall prescribe regulations to carry out this section.

#### -SOURCE-

(Added Pub. L. 100-322, title II, Sec. 212(a)[(1)], May 20, 1988, 102 Stat. 514, Sec. 4120; renumbered Sec. 7458 and amended Pub. L. 102-40, title IV, Sec. 401(c)(4), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, Sec. 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, Sec. 1201(h)(4), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 110-387, title IX, Sec. 901(a)(6), Oct. 10, 2008, 122 Stat. 4142.)

#### -MISC1-

##### AMENDMENTS

2008 - Subsec. (b)(2). Pub. L. 110-387 substituted "pro-rated" for "pro rated".

1994 - Pub. L. 103-446 substituted "Recruitment and retention bonus pay" for "Recruitment and retention bonus pay for nurses and

certain other health-care personnel" as section catchline.

1992 - Subsec. (e). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

1991 - Pub. L. 102-40 renumbered section 4120 of this title as this section.

Subsec. (a). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, Sec. 4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsecs. (b)(1), (c)(2), (e). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (f). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places and "Secretary's" for "Administrator's".

Pub. L. 102-40 substituted "subchapter III" for "section 4118 of this title".

Subsecs. (g)(1), (2), (h). Pub. L. 102-83, Sec. 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

-End-

-CITE-

38 USC Sec. 7459

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER IV - PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

-HEAD-

Sec. 7459. Nursing staff: special rules for overtime duty

-STATUTE-

(a) Limitation. - Except as provided in subsection (c), the Secretary may not require nursing staff to work more than 40 hours (or 24 hours if such staff is covered under section 7456 of this title) in an administrative work week or more than eight consecutive hours (or 12 hours if such staff is covered under section 7456 or 7456A of this title).

(b) Voluntary Overtime. - (1) Nursing staff may on a voluntary basis elect to work hours otherwise prohibited by subsection (a).

(2) The refusal of nursing staff to work hours prohibited by subsection (a) shall not be grounds -

(A) to discriminate (within the meaning of section 704(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-3(a))) against the staff;

(B) to dismiss or discharge the staff; or

(C) for any other adverse personnel action against the staff.

(c) Overtime Under Emergency Circumstances. - (1) Subject to paragraph (2), the Secretary may require nursing staff to work hours otherwise prohibited by subsection (a) if -

(A) the work is a consequence of an emergency that could not have been reasonably anticipated;

(B) the emergency is non-recurring and is not caused by or aggravated by the inattention of the Secretary or lack of reasonable contingency planning by the Secretary;

(C) the Secretary has exhausted all good faith, reasonable attempts to obtain voluntary workers;

(D) the nurse staff have critical skills and expertise that are required for the work; and

(E) the work involves work for which the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure.

(2) Nursing staff may not be required to work hours under this subsection after the requirement for a direct role by the staff in responding to medical needs resulting from the emergency ends.

(d) Nursing Staff Defined. - In this section, the term "nursing staff" includes the following:

(1) A registered nurse.

(2) A licensed practical or vocational nurse.

(3) A nurse assistant appointed under this chapter or title 5.

(4) Any other nurse position designated by the Secretary for purposes of this section.

-SOURCE-

(Added Pub. L. 111-163, title VI, Sec. 602(a)(1), May 5, 2010, 124 Stat. 1172.)

-End-

-CITE-

38 USC SUBCHAPTER V - DISCIPLINARY AND GRIEVANCE  
PROCEDURES 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER V - DISCIPLINARY AND GRIEVANCE PROCEDURES

-HEAD-

SUBCHAPTER V - DISCIPLINARY AND GRIEVANCE PROCEDURES

-End-

-CITE-

38 USC Sec. 7461 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER V - DISCIPLINARY AND GRIEVANCE PROCEDURES

-HEAD-

Sec. 7461. Adverse actions: section 7401(1) employees

-STATUTE-

(a) Whenever the Under Secretary for Health (or an official designated by the Under Secretary for Health) brings charges based on conduct or performance against a section 7401(1) employee and as a result of those charges an adverse personnel action is taken against the employee, the employee shall have the right to appeal

the action.

(b)(1) If the case involves or includes a question of professional conduct or competence in which a major adverse action was taken, such an appeal shall be made to a Disciplinary Appeals Board under section 7462 of this title.

(2) In any other case, such an appeal shall be made -

(A) through Department grievance procedures under section 7463 of this title, in any case that involves or includes a question of professional conduct or competence in which a major adverse action was not taken or in any case of an employee who is not covered by a collective bargaining agreement under chapter 71 of title 5; or

(B) through grievance procedures provided through collective bargaining under chapter 71 of title 5 or through Department grievance procedures under section 7463 of this title, as the employee elects, in the case of an employee covered by a collective bargaining agreement under chapter 71 of title 5 that does not involve or include a question of professional conduct or competence.

(c) For purposes of this subchapter -

(1) Section 7401(1) employees are employees of the Department employed on a full-time basis under a permanent appointment in a position listed in section 7401(1) of this title (other than interns and residents appointed pursuant to section 7406 of this title).

(2) A major adverse action is an adverse action which includes any of the following:

(A) Suspension.

(B) Transfer.

(C) Reduction in grade.

(D) Reduction in basic pay.

(E) Discharge.

(3) A question of professional conduct or competence is a question involving any of the following:

(A) Direct patient care.

(B) Clinical competence.

(d) An issue of whether a matter or question concerns, or arises out of, professional conduct or competence is not itself subject to any grievance procedure provided by law, regulation, or collective bargaining and may not be reviewed by any other agency.

(e) Whenever the Secretary proposes to prescribe regulations under this subchapter, the Secretary shall publish the proposed regulations in the Federal Register for notice-and-comment not less than 30 days before the day on which they take effect.

#### -SOURCE-

(Added Pub. L. 102-40, title II, Sec. 203(a), May 7, 1991, 105 Stat. 202; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### -MISC1-

##### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

## AMENDMENTS

1992 - Subsec. (a). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

## REGULATIONS

Section 204 of Pub. L. 102-40 provided that: "The Secretary of Veterans Affairs shall prescribe regulations under subchapter V of chapter 74 of title 38, United States Code (as added by section 203), not later than 180 days after the date of the enactment of this Act [May 7, 1991]. Such regulations shall be published in the Federal Register for notice-and-comment not less than 30 days before the day on which they take effect."

-End-

-CITE-

38 USC Sec. 7462

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER V - DISCIPLINARY AND GRIEVANCE PROCEDURES

-HEAD-

Sec. 7462. Major adverse actions involving professional conduct or competence

-STATUTE-

(a)(1) Disciplinary Appeals Boards appointed under section 7464 of this title shall have exclusive jurisdiction to review any case -

(A) which arises out of (or which includes) a question of professional conduct or competence of a section 7401(1) employee; and

(B) in which a major adverse action was taken.

(2) The board shall include in its record of decision in any mixed case a statement of the board's exclusive jurisdiction under this subsection and the basis for such exclusive jurisdiction.

(3) For purposes of paragraph (2), a mixed case is a case that includes both a major adverse action arising out of a question of professional conduct or competence and an adverse action which is not a major adverse action or which does not arise out of a question of professional conduct or competence.

(b)(1) In any case in which charges are brought against a section 7401(1) employee which arises out of, or includes, a question of professional conduct or competence which could result in a major adverse action, the employee is entitled to the following:

(A) At least 30 days advance written notice from the Under Secretary for Health or other charging official specifically stating the basis for each charge, the adverse actions that could be taken if the charges are sustained, and a statement of any specific law, regulation, policy, procedure, practice, or other specific instruction that has been violated with respect to each charge, except that the requirement for notification in advance may be waived if there is reasonable cause to believe that the employee has committed a crime for which the employee may be imprisoned.

(B) A reasonable time, but not less than seven days, to present an answer orally and in writing to the Under Secretary for Health or other deciding official, who shall be an official higher in rank than the charging official, and to submit affidavits and other documentary evidence in support of the answer.

(2) In any case described in paragraph (1), the employee is entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

(3)(A) If a proposed adverse action covered by this section is not withdrawn, the deciding official shall render a decision in writing within 21 days of receipt by the deciding official of the employee's answer. The decision shall include a statement of the specific reasons for the decision with respect to each charge. If a major adverse action is imposed, the decision shall state whether any of the charges sustained arose out of a question of professional conduct or competence. If any of the charges are sustained, the notice of the decision to the employee shall include notice of the employee's rights of appeal.

(B) Notwithstanding the 21-day period specified in subparagraph (A), a proposed adverse action may be held in abeyance if the employee requests, and the deciding official agrees, that the employee shall seek counseling or treatment for a condition covered under the Rehabilitation Act of 1973. Any such abeyance of a proposed action may not extend for more than one year.

(4)(A) The Secretary may require that any answer and submission under paragraph (1)(B) be submitted so as to be received within 30 days of the date of the written notice of the charges, except that the Secretary shall allow the granting of extensions for good cause shown.

(B) The Secretary shall require that any appeal to a Disciplinary Appeals Board from a decision to impose a major adverse action shall be received within 30 days after the date of service of the written decision on the employee.

(c)(1) When a Disciplinary Appeals Board convenes to consider an appeal in a case under this section, the board, before proceeding to consider the merits of the appeal, shall determine whether the case is properly before it.

(2) Upon hearing such an appeal, the board shall, with respect to each charge appealed to the board, sustain the charge, dismiss the charge, or sustain the charge in part and dismiss the charge in part. If the deciding official is sustained (in whole or in part) with respect to any such charge, the board shall -

(A) approve the action as imposed;

(B) approve the action with modification, reduction, or exception; or

(C) reverse the action.

(3) A board shall afford an employee appealing an adverse action under this section an opportunity for an oral hearing. If such a hearing is held, the board shall provide the employee with a transcript of the hearing.

(4) The board shall render a decision in any case within 45 days of completion of the hearing, if there is a hearing, and in any event no later than 120 days after the appeal commenced.

(d)(1) After resolving any question as to whether a matter involves professional conduct or competence, the Secretary shall cause to be executed the decision of the Disciplinary Appeals Board in a timely manner and in any event in not more than 90 days after the decision of the Board is received by the Secretary. Pursuant to the board's decision, the Secretary may order reinstatement, award



back pay, and provide such other remedies as the board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(2) If the Secretary finds a decision of the board to be clearly contrary to the evidence or unlawful, the Secretary may -

(A) reverse the decision of the board, or

(B) vacate the decision of the board and remand the matter to the Board for further consideration.

(3) If the Secretary finds the decision of the board (while not clearly contrary to the evidence or unlawful) to be not justified by the nature of the charges, the Secretary may mitigate the adverse action imposed.

(4) The Secretary's execution of a board's decision shall be the final administrative action in the case.

(e) The Secretary may designate an employee of the Department to represent management in any case before a Disciplinary Appeals Board.

(f)(1) A section 7401(1) employee adversely affected by a final order or decision of a Disciplinary Appeals Board (as reviewed by the Secretary) may obtain judicial review of the order or decision.

(2) In any case in which judicial review is sought under this subsection, the court shall review the record and hold unlawful and set aside any agency action, finding, or conclusion found to be -

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) obtained without procedures required by law, rule, or regulation having been followed; or

(C) unsupported by substantial evidence.

-SOURCE-

(Added Pub. L. 102-40, title II, Sec. 203(a), May 7, 1991, 105 Stat. 203; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

-REFTEXT-

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b)(3)(B), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (Sec. 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992 - Subsec. (b)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in subpars. (A) and (B).

-End-

-CITE-

**-EXPCITE-**

TITLE 38 - VETERANS' BENEFITS  
 PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
 CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
 SUBCHAPTER V - DISCIPLINARY AND GRIEVANCE PROCEDURES

**-HEAD-**

Sec. 7463. Other adverse actions

**-STATUTE-**

(a) The Secretary shall prescribe by regulation procedures for the consideration of grievances of section 7401(1) employees arising from adverse personnel actions in which each action taken either -

- (1) is not a major adverse action; or
- (2) does not arise out of a question of professional conduct or competence.

Disciplinary Appeals Boards shall not have jurisdiction to review such matters, other than as part of a mixed case (as defined in section 7462(a)(3) of this title).

(b) In the case of an employee who is a member of a collective bargaining unit under chapter 71 of title 5, the employee may seek review of an adverse action described in subsection (a) either under the grievance procedures provided through regulations prescribed under subsection (a) or through grievance procedures determined through collective bargaining, but not under both. The employee shall elect which grievance procedure to follow. Any such election may not be revoked.

(c)(1) In any case in which charges are brought against a section 7401(1) employee which could result in a major adverse action and which do not involve professional conduct or competence, the employee is entitled to the same notice and opportunity to answer with respect to those charges as provided in subparagraphs (A) and (B) of section 7462(b)(1) of this title.

(2) In any other case in which charges are brought against a section 7401(1) employee, the employee is entitled to -

- (A) an advance written notice stating the specific reason for the proposed action, and
- (B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(d) Grievance procedures prescribed under subsection (a) shall include the following:

- (1) A right to formal review by an impartial examiner within the Department of Veterans Affairs, who, in the case of an adverse action arising from a question of professional conduct or competence, shall be selected from the panel designated under section 7464 of this title.
- (2) A right to a prompt report of the findings and recommendations by the impartial examiner.
- (3) A right to a prompt review of the examiner's findings and recommendations by an official of a higher level than the official who decided upon the action. That official may accept, modify, or reject the examiner's recommendations.

(e) In any review of an adverse action under the grievance procedures prescribed under subsection (a), the employee is

entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

-SOURCE-

(Added Pub. L. 102-40, title II, Sec. 203(a), May 7, 1991, 105 Stat. 205.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

-End-

-CITE-

38 USC Sec. 7464

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL

SUBCHAPTER V - DISCIPLINARY AND GRIEVANCE PROCEDURES

-HEAD-

Sec. 7464. Disciplinary Appeals Boards

-STATUTE-

(a) The Secretary shall from time to time appoint boards to hear appeals of major adverse actions described in section 7462 of this title. Such boards shall be known as Disciplinary Appeals Boards. Each board shall consist of three employees of the Department, each of whom shall be of the same grade as, or be senior in grade to, the employee who is appealing an adverse action. At least two of the members of each board shall be employed in the same category of position as the employee who is appealing the adverse action. Members of a board shall be appointed from individuals on the panel established under subsection (d).

(b)(1) In appointing a board for any case, the Secretary shall designate one of the members to be chairman and one of the members to be secretary of the board, each of whom shall have authority to administer oaths.

(2) Appointment of boards, and the proceedings of such boards, shall be carried out under regulations prescribed by the Secretary. A verbatim record shall be maintained of board hearings.

(c)(1) Notwithstanding sections 5701 and 7332 of this title, the chairman of a board, upon request of an employee whose case is under consideration by the board (or a representative of that employee) may, in connection with the considerations of the board, review records or information covered by those sections and may authorize the disclosure of such records or information to that employee (or representative) to the extent the board considers appropriate for purposes of the proceedings of the board in that case.

(2) In any such case the board chairman may direct that measures be taken to protect the personal privacy of individuals whose records are involved. Any person who uses or discloses a record or

information covered by this subsection for any purpose other than in connection with the proceedings of the board shall be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of a subsequent offense.

(d)(1) The Secretary shall provide for the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. Those employees shall constitute the panel from which board members in a case are appointed. The Secretary shall provide (without charge) a list of the names of employees on the panel to any person requesting such list.

(2) The Secretary shall announce periodically, and not less often than annually, that the roster of employees on the panel is available as described in paragraph (1). Such announcement shall be made at Department medical facilities and through publication in the Federal Register. Notice of a name being on the list must be provided at least 30 days before the individual selected may serve on a Board or as a grievance examiner. Employees, employee organizations, and other interested parties may submit comments to the Secretary concerning the suitability for service on the panel of any employee whose name is on the list.

(3) The Secretary shall provide training in the functions and duties of Disciplinary Appeals Boards and grievance procedures under section 7463 of this title for employees selected to be on the panel.

-SOURCE-

(Added Pub. L. 102-40, title II, Sec. 203(a), May 7, 1991, 105 Stat. 206.)

-MISC1-

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

-End-

-CITE-

38 USC SUBCHAPTER VI - REGIONAL MEDICAL EDUCATION CENTERS 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER VI - REGIONAL MEDICAL EDUCATION CENTERS

-HEAD-

SUBCHAPTER VI - REGIONAL MEDICAL EDUCATION CENTERS

-End-

-CITE-

38 USC Sec. 7471 01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS

PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER VI - REGIONAL MEDICAL EDUCATION CENTERS

-HEAD-

Sec. 7471. Designation of Regional Medical Education Centers

-STATUTE-

(a) In carrying out the Secretary's functions under section 7302 of this title with regard to the training of health personnel, the Secretary shall implement a program under which the Secretary shall designate as Regional Medical Education Centers such Department hospitals as the Secretary determines appropriate to carry out the provisions of this subchapter.

(b) Each Regional Medical Education Center (hereinafter in this subchapter referred to as "Center") designated under subsection (a) shall provide continuing medical and related education programs for personnel eligible for training under this subchapter. Such programs shall include the following:

- (1) The teaching of newly developed medical skills and the use of newly developed medical technologies and equipment.
- (2) Advanced clinical instruction.
- (3) The opportunity for conducting clinical investigations.
- (4) Clinical demonstrations in the use of new types of health personnel and in the better use of the skills of existing health personnel.
- (5) Routine verification of basic medical skills and, where determined necessary, remediation of any deficiency in such skills.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(5), May 7, 1991, 105 Stat. 237.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4121 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

-End-

-CITE-

38 USC Sec. 7472

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER VI - REGIONAL MEDICAL EDUCATION CENTERS

-HEAD-

Sec. 7472. Supervision and staffing of Centers

-STATUTE-

(a) Centers shall be operated under the supervision of the Under Secretary for Health and shall be staffed with personnel qualified

to provide the highest quality instruction and training in various medical and health care disciplines.

(b) As a means of providing appropriate recognition to persons in the career service of the Administration who possess outstanding qualifications in a particular medical or health care discipline, the Under Secretary for Health shall from time to time and for such period as the Under Secretary for Health considers appropriate assign such persons to serve as visiting instructors at Centers.

(c) Whenever the Under Secretary for Health considers it necessary for the effective conduct of the program provided for under this subchapter, the Under Secretary for Health may contract for the services of highly qualified medical and health personnel from outside the Department to serve as instructors at such Centers.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(5), May 7, 1991, 105 Stat. 237; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4122 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992 - Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" wherever appearing.

-End-

-CITE-

38 USC Sec. 7473

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER VI - REGIONAL MEDICAL EDUCATION CENTERS

-HEAD-

Sec. 7473. Personnel eligible for training

-STATUTE-

(a) The Under Secretary for Health shall determine the manner in which personnel are to be selected for training in the Centers. Preference shall be given to career personnel of the Administration.

(b) To the extent that facilities are available medical and health personnel from outside the Administration may, on a reimbursable basis, be provided training in the Centers. Such reimbursement may include reciprocal training of personnel of the Administration provided under sharing arrangements entered into by the Under Secretary for Health and the heads of the entities providing such reciprocal training. Any amounts received by the United States as reimbursement under this subsection shall be

credited to the applicable Department medical appropriation account.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(5), May 7, 1991, 105 Stat. 237; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4123 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992 - Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in subsecs. (a) and (b).

-End-

-CITE-

38 USC Sec. 7474

01/03/2012 (112-90)

-EXPCITE-

TITLE 38 - VETERANS' BENEFITS  
PART V - BOARDS, ADMINISTRATIONS, AND SERVICES  
CHAPTER 74 - VETERANS HEALTH ADMINISTRATION - PERSONNEL  
SUBCHAPTER VI - REGIONAL MEDICAL EDUCATION CENTERS

-HEAD-

Sec. 7474. Consultation

-STATUTE-

The Under Secretary for Health shall carry out this subchapter after consultation with the special medical advisory group established pursuant to section 7312(a) of this title.

-SOURCE-

(Added Pub. L. 102-40, title IV, Sec. 401(b)(5), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-405, title III, Sec. 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4124 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992 - Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

-End-

