

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)<sup>1</sup> 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 ex-

ecutives 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.

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

#### 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, §201(a)(4), Nov. 1, 2000, 114 Stat. 1840.

#### 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, §401(c)(1)(A), renumbered section 4142 of this title as this section.

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

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

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

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

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

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

Subsec. (f). Pub. L. 102-40, §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.

#### § 7453. Nurses: additional pay

(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).

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

#### 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, §601(k)(1)(A), substituted “a full-time nurse or part-time nurse” for “a nurse”.

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

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

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

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

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

(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.

(Added Pub. L. 102-40, title IV, §401(b)(4), May 7, 1991, 105 Stat. 234; amended Pub. L. 107-135, title I, §121(a), Jan. 23, 2002, 115 Stat. 2450; Pub. L. 108-170, title III, §§301(d), 303(a), Dec. 6, 2003, 117 Stat. 2057, 2058; Pub. L. 111-163, title VI, §601(k)(2), May 5, 2010, 124 Stat. 1171.)

#### 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, §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, §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, §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, §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]."

#### § 7455. Increases in rates of basic pay

(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 mini-