

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

Section 7437, added Pub. L. 102-40, title I, § 102, May 7, 1991, 105 Stat. 194; amended Pub. L. 102-405, title II, § 204(a), title III, § 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, § 102, May 7, 1991, 105 Stat. 196; amended Pub. L. 106-419, title II, § 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, § 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, § 102, May 7, 1991, 105 Stat. 198; amended Pub. L. 103-446, title XII, § 1201(c)(6), Nov. 2, 1994, 108 Stat. 4684, related to annual reports of the use of authorities provided in this subchapter.

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

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

(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),<sup>1</sup> 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<sup>1</sup> 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

<sup>1</sup> See References in Text note below.

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.

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

#### 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, §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.

#### AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111-163, §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, §601(j)(1), added subpar. (F).

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

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

Subsecs. (f), (g). Pub. L. 111-163, §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, §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, §133(1)(B), struck out "beginning rates of" before "compensation for corresponding health-care professionals".

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

Subsec. (d)(4). Pub. L. 107-135, §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, §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, §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, §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, §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, §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, §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, §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, §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, §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, §1201(e)(23), substituted "labor-market area" for "labor market area".

Subsec. (g)(1). Pub. L. 103-446, §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, §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, § 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, § 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, § 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, § 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, § 304(b), added par. (9). Subsec. (g)(10). Pub. L. 102-585, § 307, added par. (10).

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

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

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

Subsec. (d)(1)(B). Pub. L. 102-40, § 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, § 301(b)(2)(B), added subpar. (C). Former subpar. (C) redesignated (D).

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

Subsec. (d)(4). Pub. L. 102-40, § 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, § 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, § 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

Pub. L. 102-40, title III, § 301(a), May 7, 1991, 105 Stat. 208, 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, § 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, § 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 (§§ 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, §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

Pub. L. 102-585, title III, §305, Nov. 4, 1992, 106 Stat. 4952, 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 stand-

ards 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

Pub. L. 102-585, title III, §306, Nov. 4, 1992, 106 Stat. 4952, 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]."

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

(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,