

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-

mum 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.

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

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.

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, §302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” in par. (1).

Pub. L. 102-405, §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”.

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.

**§ 7456. Nurses: special rules for weekend duty**

(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.

(Added Pub. L. 102-40, title IV, §401(b)(4), May 7, 1991, 105 Stat. 235; amended Pub. L. 111-163, title VI, §602(b), May 5, 2010, 124 Stat. 1173.)

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.”

**§ 7456A. Nurses: alternate work schedules**

(a) APPLICABILITY.—This section applies to registered nurses appointed under this chapter.