

(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.

(Added Pub. L. 108-445, §4(a)(1), Dec. 3, 2004, 118 Stat. 2643; amended Pub. L. 111-163, title VI, §602(c), May 5, 2010, 124 Stat. 1173.)

#### AMENDMENTS

2010—Subsec. (b). Pub. L. 111-163, §602(c)(2)(A), substituted “72/80” for “36/40” in heading.

Subsec. (b)(1)(A). Pub. L. 111-163, §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, §602(c)(2)(B), substituted “80-hour pay period” for “40-hour basic work week”.

Subsec. (b)(3). Pub. L. 111-163, §602(c)(2)(C), struck out “regularly” before “scheduled 12-hour tour”.

#### § 7457. On-call pay

(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).

(Added Pub. L. 102-40, title IV, §401(b)(4), May 7, 1991, 105 Stat. 236.)

#### 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.

#### § 7458. Recruitment and retention bonus pay

(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.

(Added Pub. L. 100-322, title II, §212(a)[(1)], May 20, 1988, 102 Stat. 514, §4120; renumbered §7458 and amended Pub. L. 102-40, title IV, §401(c)(4), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(h)(4), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 110-387, title IX, §901(a)(6), Oct. 10, 2008, 122 Stat. 4142.)

#### 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, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" wherever appearing.

Subsecs. (b)(1), (c)(2), (e). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (f). Pub. L. 102-83, §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, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

**§ 7459. Nursing staff: special rules for overtime duty**

(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.

(Added Pub. L. 111-163, title VI, §602(a)(1), May 5, 2010, 124 Stat. 1172.)

**SUBCHAPTER V—DISCIPLINARY AND GRIEVANCE PROCEDURES**

**§ 7461. Adverse actions: section 7401(1) employees**

(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 case other than a case described in paragraph (1) that involves or includes a question of professional conduct or competence in which a major adverse action was not taken, such an appeal shall be made through Department grievance procedures under section 7463 of this title.

(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 employees in senior executive positions (as defined in section 713(d) of this title) and 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.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 202; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 115-41, title II, §§201(b), 208(a), June 23, 2017, 131 Stat. 869, 878.)

**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.