

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, §202(1), substituted “subsection (e), subchapter III, and” for “subchapter III and in”.

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

2004—Subsec. (a). Pub. L. 108-445, §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, §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, §3(f)(1), substituted “pay” for “special pay”.

Subsec. (d). Pub. L. 108-445, §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, §206, inserted “, or comparable position” before period at end of first sentence.

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-163, title VI, §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

Pub. L. 102-585, title III, §308, Nov. 4, 1992, 106 Stat. 4953, 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].”

WAIVERS

Pub. L. 116-146, §1(b), July 2, 2020, 134 Stat. 658, provided that:

“(1) IN GENERAL.—The Secretary of Veterans Affairs may waive the limitation described in section 7404(d) of such title [38 U.S.C. 7404(d)], as in effect on the day before the date of the enactment of this Act [July 2, 2020], on the amount of basic pay payable to individuals appointed under section 7401(4) or 7306 of such title [38 U.S.C. 7401(4), 7306] for basic pay payable during the period—

“(A) beginning on November 1, 2010; and

“(B) ending on the day before the date of the enactment of this Act.

“(2) FORM.—The Secretary shall prescribe the form for requesting a waiver under paragraph (1).

“(3) TREATMENT OF WAIVER.—A decision not to grant a waiver under paragraph (1) shall not be treated as an adverse action and is not subject to further appeal, third-party review, or judicial review.”

APPLICATION

Pub. L. 115-182, title V, §502(b)(2), June 6, 2018, 132 Stat. 1475, provided that: “The amendments made by paragraph (1) [amending this section] shall apply with respect to a pay period of the Department of Veterans Affairs beginning on or after the date that is 30 days after the date of the enactment of this Act [June 6, 2018].”

Executive Documents

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.

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

(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 cat-

egory 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.

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

Editorial Notes

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, § 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, § 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, § 301(c)(2), substituted “paragraphs (1) and (3) of section 7401” for “section 7401(1)”.

2000—Subsec. (c)(2). Pub. L. 106-419, § 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, §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".

Statutory Notes and Related Subsidiaries

RECRUITMENT OF MENTAL HEALTH PROVIDERS FOR FURNISHING MENTAL HEALTH SERVICES ON BEHALF OF THE DEPARTMENT OF VETERANS AFFAIRS WITHOUT COMPENSATION FROM THE DEPARTMENT

Pub. L. 112-239, div. A, title VII, §729, Jan. 2, 2013, 126 Stat. 1813, provided that:

"(a) IN GENERAL.—The Secretary of Veterans Affairs shall carry out a national program of outreach to societies, community organizations, nonprofit organizations, and government entities in order to recruit mental health providers who meet the quality standards and requirements of the Department of Veterans Affairs to provide mental health services for the Department on a part-time, without-compensation basis, under section 7405 of title 38, United States Code.

"(b) PARTNERING WITH AND DEVELOPING COMMUNITY ENTITIES AND NONPROFIT ORGANIZATIONS.—In carrying out the program required by subsection (a), the Secretary may partner with a community entity or nonprofit organization or assist in the development of a community entity or nonprofit organization, including by entering into an agreement under section 8153 of title 38, United States Code, that provides strategic coordination of the societies, organizations, and government entities described in subsection (a) in order to maximize the availability and efficient delivery of mental health services to veterans by such societies, organizations, and government entities.

"(c) MILITARY CULTURE TRAINING.—In carrying out the program required by subsection (a), the Secretary shall provide training to mental health providers to ensure that clinicians who provide mental health services as described in such subsection have sufficient understanding of military-specific and service-specific culture, combat experience, and other factors that are unique to the experience of veterans who served in Operation Enduring Freedom, Operating Iraqi Freedom, or Operation New Dawn."

§ 7406. Residencies and internships

(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.