

§ 7422. Collective bargaining

(a) Except as otherwise specifically provided in this title, the authority of the Secretary to prescribe regulations under section 7421 of this title is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5 (relating to labor-management relations).

(b) Such collective bargaining (and any grievance procedures provided under a collective bargaining agreement) in the case of employees described in section 7421(b) of this title may not cover, or have any applicability to, any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title.

(c) For purposes of this section, the term "professional conduct or competence" means any of the following:

- (1) Direct patient care.
- (2) Clinical competence.

(d) An issue of whether a matter or question concerns or arises out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title shall be decided by the Secretary and is not itself subject to collective bargaining and may not be reviewed by any other agency.

(e) A petition for judicial review or petition for enforcement under section 7123 of title 5 in any case involving employees described in section 7421(b) of this title or arising out of the applicability of chapter 71 of title 5 to employees in those positions, shall be taken only in the United States Court of Appeals for the District of Columbia Circuit.

(Added Pub. L. 102-40, title II, § 202, May 7, 1991, 105 Stat. 200.)

§ 7423. Personnel administration: full-time employees

(a)(1) Except as provided in paragraph (2), the hours of employment in carrying out responsibilities under this title of any employee who is appointed in the Administration under any provision of this chapter on a full-time basis in a position listed in section 7421(b) of this title (other than an intern or resident appointed pursuant to section 7406 of this title) and who accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title shall consist of not less than 80 hours in a biweekly pay period (as that term is used in section 5504 of title 5).

(2)(A) Upon the advance written request of a covered physician, the Secretary may modify the hours of employment for a physician appointed in the Administration under any provision of this chapter on a full-time basis to be more or less than 80 hours in a biweekly pay period, subject to the requirements in subparagraph (B). For the purpose of determining pay, such a physician shall be deemed to have a biweekly schedule of 80 hours of employment.

(B) A physician with an irregular work schedule established under subparagraph (A) shall be obligated to account for at least 2,080 hours of employment (through performance of work or use of leave or paid time off) in a calendar year.

(C) The Secretary may prescribe regulations to implement this paragraph, including regulations making adjustments to address the annual hours requirement for physicians who are covered by this paragraph for only a portion of a calendar year.

(D) The Secretary may exclude from the requirements of paragraph (1) employees hired under section 7306 or 7401(4) of this title or for a position described in section 7401(1) of this title that the Secretary has determined is of equivalent rank to a Senior Executive Service position (as such term is defined in section 3132(a) of title 5).

(b) A person covered by subsection (a) may not do any of the following:

(1) Teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title.

(2) Accept payment under any insurance or assistance program established under title XVIII or XIX of the Social Security Act or under chapter 55 of title 10 for professional services rendered by such person while carrying out such person's responsibilities under this title.

(3) Accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5.

(4) Request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, except where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title.

(5) Perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both.

(c) In the case of any fund or account described in subsection (b)(5) that was established before September 1, 1973—

(1) the affiliated institution shall submit semiannually an accounting to the Secretary and to the Comptroller General of the United States with respect to such fund or account and shall maintain such fund or account subject to full public disclosure and audit by the Secretary and the Comptroller General for a period of three years or for such longer period as the Secretary shall prescribe, and

(2) no person in a position specified in paragraph (1)(B) may receive any cash from amounts deposited in such fund or account derived from services performed before that date.

(d) As used in this section:

(1) The term “affiliated institution” means a medical school or other institution of higher learning with which the Secretary has a contract or agreement as referred to in section 7313 of this title for the training or education of health personnel.

(2) The term “remuneration” means the receipt of any amount of monetary benefit from any non-Department source in payment for carrying out any professional responsibilities.

(e)(1) The Secretary shall establish a leave transfer program for the benefit of health-care professionals in positions listed in section 7421(b) of this title. The Secretary may also establish a leave bank program for the benefit of such health-care professionals.

(2) To the maximum extent feasible—

(A) the leave transfer program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

(B) any leave bank program established pursuant to paragraph (1) shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

(3) Participation by a health-care professional in the leave transfer program established pursuant to paragraph (1), and in any leave bank program established pursuant to such paragraph, shall be voluntary. The Secretary may not require any health-care professional to participate in such a program.

(4)(A) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) to participate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5 or in any leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5, or both.

(B) Participation of such health-care professionals in a leave transfer program or a leave bank program pursuant to an agreement entered into under subparagraph (A) shall be subject to such requirements and conditions as may be prescribed in such agreement.

(5) The Secretary is not required to establish a leave transfer program for any personnel permitted to participate in a leave transfer program pursuant to an agreement referred to in paragraph (4).

(f) The Secretary may purchase promotional items of nominal value for use in the recruitment of individuals for employment under this chapter. The Secretary shall prescribe guidelines for the administration of the preceding sentence.

(Added and amended Pub. L. 102-40, title II, §202, title IV, §401(b)(3)(A), May 7, 1991, 105 Stat. 201,

230; Pub. L. 102-405, title II, §203, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1983, 1984; Pub. L. 104-262, title III, §347, Oct. 9, 1996, 110 Stat. 3208; Pub. L. 114-315, title VI, §614, Dec. 16, 2016, 130 Stat. 1577; Pub. L. 117-168, title IX, §906(c)(2), Aug. 10, 2022, 136 Stat. 1812.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4108(a), (c), and (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

2022—Subsec. (a)(2)(D). Pub. L. 117-168, §906(c)(2)(A), added subpar. (D).

Subsec. (e)(1). Pub. L. 117-168, §906(c)(2)(B), substituted “7421(b)” for “7401(1)”.

2016—Subsec. (a). Pub. L. 114-315 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the hours” for “The hours”, and added par. (2).

1996—Subsec. (b). Pub. L. 104-262, §347(a), redesignated pars. (2) to (6) as (1) to (5), respectively, and struck out former par. (1) which read as follows: “Assume responsibility for the medical care of any patient other than a patient admitted for treatment at a Department facility, except in those cases where the person, upon request and with the approval of the Under Secretary for Health, assumes such responsibilities to assist communities or medical practice groups to meet medical needs which would not otherwise be available for a period not to exceed 180 calendar days, which may be extended by the Under Secretary for Health for additional periods not to exceed 180 calendar days each.”

Subsec. (c). Pub. L. 104-262, §347(b), substituted “subsection (b)(5)” for “subsection (b)(6)” in introductory provisions.

1992—Subsec. (b)(1). Pub. L. 102-405, §302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

Subsec. (f). Pub. L. 102-405, §203, added subsec. (f).

1991—Subsec. (e). Pub. L. 102-40, §401(b)(3)(A), added subsec. (e).

Statutory Notes and Related Subsidiaries

ESTABLISHMENT OF LEAVE BANK PROGRAM

For provision authorizing the establishment of a leave bank program for health-care professional covered under subsec. (e) of former section 4108 of this title [now covered by subsec. (e) of this section] similar to the leave bank program for Federal civilian employees in reserves who were activated during Persian Gulf War, see section 361 of Pub. L. 102-25, set out as a Leave Bank for Federal Civilian Employees in Reserves Who Were Activated During Persian Gulf War note under section 6361 of Title 5, Government Organization and Employees.

§ 7424. Travel expenses of certain employees

(a) The Secretary may pay the expenses (other than membership fees) of persons described in sections 7306 and 7401(1) of this title (including persons in positions described in section 7401(1)