

107TH CONGRESS
1ST SESSION

S. 1188

To amend title 38, United States Code, to enhance the authority of the Secretary of Veterans Affairs to recruit and retain qualified nurses for the Veterans Health Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2001

Mr. ROCKEFELLER (for himself and Mr. CLELAND) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to enhance the authority of the Secretary of Veterans Affairs to recruit and retain qualified nurses for the Veterans Health Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Department of Veterans Affairs Nurse Recruitment and
6 Retention Enhancement Act of 2001”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. References to title 38, United States Code.

TITLE I—ENHANCEMENT OF RECRUITMENT AUTHORITIES

- Sec. 101. Enhancement of employee incentive scholarship program.
 Sec. 102. Enhancement of education debt reduction program.
 Sec. 103. Report on requests for waivers of pay reductions for reemployed annuitants to fill nurse positions.

TITLE II—ENHANCEMENT OF RETENTION AUTHORITIES

- Sec. 201. Additional pay for Saturday tours of duty for additional health care professional in the Veterans Health Administration.
 Sec. 202. Unused sick leave included in annuity computation of registered nurses with the Veterans Health Administration.
 Sec. 203. Evaluation of Department of Veterans Affairs nurse managed clinics.
 Sec. 204. Staffing levels for operations of medical facilities.
 Sec. 205. Annual report on use of authorities to enhance retention of experienced nurses.
 Sec. 206. Report on mandatory overtime for nurses and nurse assistants in Department of Veterans Affairs facilities.

TITLE III—OTHER MATTERS

- Sec. 301. Organizational responsibility of the Director of the Nursing Service.
 Sec. 302. Computation of annuity for part-time service performed by certain health-care professionals before April 7, 1986.
 Sec. 303. Modification of nurse locality pay authorities.
 Sec. 304. Technical amendments.

1 SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

2 Except as otherwise expressly provided, whenever in
 3 this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the reference shall be considered to be made to a
 6 section or other provision of title 38, United States Code.

7 TITLE I—ENHANCEMENT OF 8 RECRUITMENT AUTHORITIES

9 SEC. 101. ENHANCEMENT OF EMPLOYEE INCENTIVE 10 SCHOLARSHIP PROGRAM.

11 (a) PERMANENT AUTHORITY.—(1) Section 7676 is
 12 repealed.

1 (2) The table of sections at the beginning of chapter
 2 76 is amended by striking the item relating to section
 3 7676.

4 (b) MINIMUM PERIOD OF DEPARTMENT EMPLOY-
 5 MENT FOR ELIGIBILITY.—Section 7672(b) is amended by
 6 striking “2 years” and inserting “one year”.

7 (c) SCHOLARSHIP AMOUNT.—Subsection (b) of sec-
 8 tion 7673 is amended—

9 (1) in paragraph (1), by striking “for any one
 10 year” and inserting “for the equivalent of one year
 11 of full-time coursework”; and

12 (2) by striking paragraph (2) and inserting the
 13 following new paragraph (2):

14 “(2) in the case of a participant in the Program
 15 who is a part-time student, shall bear the same ratio
 16 to the amount that would be paid under paragraph
 17 (1) if the participant were a full-time student in the
 18 course of education or training being pursued by the
 19 participant as the coursework carried by the student
 20 bears to full-time coursework in that course of edu-
 21 cation or training.”.

22 (d) LIMITATION ON PAYMENT.—Subsection (c) of
 23 section 7673 is amended to read as follows:

24 “(c) LIMITATIONS ON PERIOD OF PAYMENT.—(1)
 25 The maximum number of school years for which a scholar-

1 ship may be paid under subsection (a) to a participant
 2 in the Program shall be six school years.

3 “(2) A participant in the Program may not receive
 4 a scholarship under subsection (a) for more than the
 5 equivalent of three years of full-time coursework.”.

6 (e) FULL-TIME COURSEWORK.—Section 7673 is fur-
 7 ther amended by adding at the end the following new sub-
 8 section:

9 “(e) FULL-TIME COURSEWORK.—For purposes of
 10 this section, full-time coursework shall consist of the fol-
 11 lowing:

12 “(1) In the case of undergraduate coursework,
 13 30 semester hours per undergraduate school year.

14 “(2) In the case of graduate coursework, 18 se-
 15 mester hours per graduate school year.”.

16 (f) ANNUAL ADJUSTMENT OF MAXIMUM SCHOLAR-
 17 SHIP AMOUNT.—Section 7631 is amended—

18 (1) in subsection (a)(1), by striking “and the
 19 maximum Selected Reserve member stipend
 20 amount” and inserting “the maximum Selected Re-
 21 serve member stipend amount, the maximum em-
 22 ployee incentive scholarship amount,”; and

23 (2) in subsection (b)—

24 (A) by redesignating paragraph (4) as
 25 paragraph (6); and

1 (B) by inserting after paragraph (3) the
 2 following new paragraph (4):

3 “(4) The term ‘maximum employee incentive
 4 scholarship amount’ means the maximum amount of
 5 the scholarship payable to a participant in the De-
 6 partment of Veterans Affairs Employee Incentive
 7 Scholarship Program under subchapter VI of this
 8 chapter, as specified in section 7673(b)(1) of this
 9 title and as previously adjusted (if at all) in accord-
 10 ance with this section.”.

11 **SEC. 102. ENHANCEMENT OF EDUCATION DEBT REDUC-**
 12 **TION PROGRAM.**

13 (a) PERMANENT AUTHORITY.—(1) Section 7684 is
 14 repealed.

15 (2) The table of sections at the beginning of chapter
 16 76 is amended by striking the item relating to section
 17 7684.

18 (b) ELIGIBLE INDIVIDUALS.—Subsection (a)(1) of
 19 section 7682 is amended—

20 (1) by striking “under an appointment under
 21 section 7402(b) of this title in a position” and in-
 22 serting “in a position (as determined by the Sec-
 23 retary) providing direct-patient care services or serv-
 24 ices incident to direct-patient care services”; and

1 (2) by striking “(as determined by the Sec-
2 retary)” and inserting “(as so determined)”.

3 (c) MAXIMUM DEBT REDUCTION AMOUNT.—Section
4 7683(d)(1) is amended—

5 (1) by striking “for a year”; and

6 (2) by striking “exceed—” and all that follows
7 through the end of the paragraph and inserting “ex-
8 ceed \$44,000 over a total of five years of participa-
9 tion in the Program, of which not more than
10 \$10,000 of such payments may be made in each of
11 the fourth and fifth years of participation in the
12 Program.”.

13 (d) ANNUAL ADJUSTMENT OF MAXIMUM DEBT RE-
14 DUCTION PAYMENTS AMOUNT.—(1) Section 7631, as
15 amended by section 101(f) of this Act, is further
16 amended—

17 (A) in subsection (a)(1), by inserting before the
18 period at the end of the first sentence the following:
19 “and the maximum education debt reduction pay-
20 ments amount”; and

21 (B) in subsection (b), by inserting after para-
22 graph (4) the following new paragraph (5):

23 “(5) The term ‘maximum education debt reduc-
24 tion payments amount’ means the maximum amount
25 of education debt reduction payments payable to a

1 participant in the Department of Veterans Affairs
2 Education Debt Reduction Program under sub-
3 chapter VII of this chapter, as specified in section
4 7683(d)(1) of this title and as previously adjusted
5 (if at all) in accordance with this section.”.

6 (2) Notwithstanding section 7631(a)(1) of title 38,
7 United States Code, as amended by paragraph (1), the
8 Secretary of Veterans Affairs shall not increase the max-
9 imum education debt reduction payments amount under
10 that section in calendar year 2002.

11 (e) TEMPORARY EXPANSION OF INDIVIDUALS ELIGI-
12 BLE FOR PARTICIPATION IN PROGRAM.—(1) Notwith-
13 standing section 7682(c) of title 38, United States Code,
14 the Secretary of Veterans Affairs may treat a covered indi-
15 vidual as being a recently appointed employee in the Vet-
16 erans Health Administration under section 7682(a) of
17 that title for purposes of eligibility in the Education Debt
18 Reduction Program if the Secretary determines that the
19 participation of the individual in the Program under this
20 subsection would further the purposes of the Program.

21 (2) For purposes of this subsection, a covered indi-
22 vidual is any individual otherwise described by section
23 7682(a) of title 38, United States Code, as in effect on
24 the day before the date of the enactment of this Act,
25 who—

1 (A) was appointed as an employee in a position
2 described in paragraph (1) of that section, as so in
3 effect, between January 1, 1999, and September 30,
4 2000; and

5 (B) is an employee in such position, or in an-
6 other position described in paragraph (1) of that
7 section, as so in effect, at the time of application for
8 treatment as a covered individual under this sub-
9 section.

10 (3) The Secretary shall make determinations regard-
11 ing the exercise of the authority in this subsection on a
12 case-by-case basis.

13 (4) The Secretary may not exercise the authority in
14 this subsection after December 31, 2001. The expiration
15 of the authority in this subsection shall not affect the
16 treatment of an individual under this subsection before
17 that date as a covered individual for purposes of eligibility
18 in the Education Debt Reduction Program.

19 (5) In this subsection, the term “Education Debt Re-
20 duction Program” means the Department of Veterans Af-
21 fairs Education Debt Reduction Program under sub-
22 chapter VII of chapter 76 of title 38, United States Code.

1 **SEC. 103. REPORT ON REQUESTS FOR WAIVERS OF PAY RE-**
2 **DUCTIONS FOR REEMPLOYED ANNUITANTS**
3 **TO FILL NURSE POSITIONS.**

4 (a) REPORT.—Not later than November 30 of each
5 of 2001 and 2002, the Secretary of Veterans Affairs shall
6 submit to the Committees on Veterans' Affairs of the Sen-
7 ate and the House of Representatives a report describing
8 each request of the Secretary, during the fiscal year pre-
9 ceding such report, to the Director of the Office of Per-
10 sonnel Management for the following:

11 (1) A waiver under subsection (i)(1)(A) of sec-
12 tion 8344 of title 5, United States Code, of the pro-
13 visions of such section in order to meet requirements
14 of the Department of Veterans Affairs for appoint-
15 ments to nurse positions in the Veterans Health Ad-
16 ministration.

17 (2) A waiver under subsection (f)(1)(A) of sec-
18 tion 8468 of title 5, United States Code, of the pro-
19 visions of such section in order to meet requirements
20 of the Department for appointments to such posi-
21 tions.

22 (3) A grant of authority under subsection
23 (i)(1)(B) of section 8344 of title 5, United States
24 Code, for the waiver of the provisions of such section
25 in order to meet requirements of the Department for
26 appointments to such positions.

1 (4) A grant of authority under subsection
 2 (f)(1)(B) of section 8468 of title 5, United States
 3 Code, for the waiver of the provisions of such section
 4 in order to meet requirements of the Department for
 5 appointments to such positions.

6 (b) INFORMATION ON RESPONSES TO REQUESTS.—
 7 The report under subsection (a) shall specify for each re-
 8 quest covered by the report—

9 (1) the response of the Director to such re-
 10 quest; and

11 (2) if such request was granted, whether or not
 12 the waiver or authority, as the case may be, assisted
 13 the Secretary in meeting requirements of the De-
 14 partment for appointments to nurse positions in the
 15 Veterans Health Administration.

16 **TITLE II—ENHANCEMENT OF** 17 **RETENTION AUTHORITIES**

18 **SEC. 201. ADDITIONAL PAY FOR SATURDAY TOURS OF DUTY** 19 **FOR ADDITIONAL HEALTH CARE PROFES-** 20 **SIONAL IN THE VETERANS HEALTH ADMINIS-** 21 **TRATION.**

22 (a) IN GENERAL.—Section 7454(b) is amended—

23 (1) by inserting “(1)” after “(b)”; and

24 (2) by adding at the end the following new
 25 paragraph:

1 “(2) Health care professionals employed in positions
 2 referred to in paragraph (1) shall be entitled to additional
 3 pay on the same basis as provided for nurses in section
 4 7453(c) of this title.”.

5 (b) APPLICABILITY.—The amendments made by sub-
 6 section (a) shall take effect on the date of the enactment
 7 of this Act, and shall apply with respect to pay periods
 8 beginning on or after that date.

9 **SEC. 202. UNUSED SICK LEAVE INCLUDED IN ANNUITY**
 10 **COMPUTATION OF REGISTERED NURSES**
 11 **WITH THE VETERANS HEALTH ADMINISTRA-**
 12 **TION.**

13 (a) ANNUITY COMPUTATION.—Section 8415 of title
 14 5, United States Code, is amended by adding at the end
 15 the following:

16 “(i) In computing an annuity under this subchapter,
 17 the total service of an employee who retires from the posi-
 18 tion of a registered nurse with the Veterans Health Ad-
 19 ministration on an immediate annuity, or dies while em-
 20 ployed in that position leaving any survivor entitled to an
 21 annuity, includes the days of unused sick leave to the cred-
 22 it of that employee under a formal leave system, except
 23 that such days shall not be counted in determining average
 24 pay or annuity eligibility under this subchapter.”.

1 (b) DEPOSIT NOT REQUIRED.—Section 8422(d) of
 2 title 5, United States Code, is amended—

3 (1) by inserting “(1)” before “Under such regu-
 4 lations”; and

5 (2) by adding at the end the following:

6 “(2) Deposit may not be required for days of unused
 7 sick leave credited under section 8415(i).”.

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall take effect 60 days after the date of the
 10 enactment of this Act, and shall apply to individuals who
 11 separate from service on or after that effective date.

12 **SEC. 203. EVALUATION OF DEPARTMENT OF VETERANS AF-**
 13 **FAIRS NURSE MANAGED CLINICS.**

14 (a) EVALUATION.—The Secretary of Veterans Affairs
 15 shall carry out an evaluation of the efficacy of the nurse
 16 managed health care clinics of the Department of Vet-
 17 erans Affairs. The Secretary shall complete the evaluation
 18 not later than 18 months after the date of the enactment
 19 of this Act.

20 (b) CLINICS TO BE EVALUATED.—(1) In carrying
 21 out the evaluation under subsection (a), the Secretary con-
 22 sider nurse managed health care clinics, including primary
 23 care clinics and geriatric care clinics, located in three dif-
 24 ferent Veterans Integrated Service Networks (VISNs) of
 25 the Department.

1 (2) If there are not nurse managed health care clinics
2 located in three different Veterans Integrated Service Net-
3 works as of the commencement of the evaluation, the Sec-
4 retary shall—

5 (A) establish nurse managed health care clinics
6 in additional Veterans Integrated Services Networks
7 such that there are nurse managed health care clin-
8 ics in three different Veterans Integrated Service
9 Networks for purposes of the evaluation; and

10 (B) include such clinics, as so established, in
11 the evaluation.

12 (c) MATTERS TO BE EVALUATED.—In carrying out
13 the evaluation under subsection (a), the Secretary shall
14 address the following:

15 (1) Patient satisfaction.

16 (2) Provider experiences.

17 (3) Cost of care.

18 (4) Access to care, including waiting time for
19 care.

20 (5) The functional status of patients receiving
21 care.

22 (6) Any other matters the Secretary considers
23 appropriate.

24 (d) REPORT.—Not later than 18 months after the
25 date of the enactment of this Act, the Secretary shall sub-

1 mit to the Committees on Veterans' Affairs of the Senate
 2 and the House of Representatives a report on the evalua-
 3 tion carried out under subsection (a). The report shall ad-
 4 dress the matters specified in subsection (c) and include
 5 any other information, and any recommendations, that the
 6 Secretary considers appropriate.

7 **SEC. 204. STAFFING LEVELS FOR OPERATIONS OF MEDICAL**
 8 **FACILITIES.**

9 (a) IN GENERAL.—Section 8110(a) is amended—

10 (1) in paragraph (1), by inserting after “com-
 11 plete care of patients,” in the fifth sentence the fol-
 12 lowing: “and in a manner consistent with the poli-
 13 cies of the Secretary on overtime,”; and

14 (2) in paragraph (2)—

15 (A) by inserting “, including the staffing
 16 required to maintain such capacities,” after “all
 17 Department medical facilities”;

18 (B) by striking “and to minimize” and in-
 19 serting “, to minimize”; and

20 (C) by inserting before the period the fol-
 21 lowing: “, and to ensure that eligible veterans
 22 are provided such care and services in an ap-
 23 propriate manner”.

24 (b) NATIONWIDE POLICY ON STAFFING.—Paragraph
 25 (3) of that section is amended—

1 (1) in subparagraph (A), by inserting “the ade-
 2 quacy of staff levels for compliance with the policy
 3 established under subparagraph (C),” after “regard-
 4 ing”; and

5 (2) by inserting after subparagraph (B) the fol-
 6 lowing new subparagraph:

7 “(C) The Secretary shall, in consultation with the
 8 Under Secretary for Health, establish a nationwide policy
 9 on the staffing of Department medical facilities in order
 10 to ensure that such facilities have adequate staff for the
 11 provision to veterans of appropriate, high-quality care and
 12 services. The policy shall take into account the staffing
 13 levels and mixture of staff skills required for the range
 14 of care and services provided veterans in Department fa-
 15 cilities.”.

16 **SEC. 205. ANNUAL REPORT ON USE OF AUTHORITIES TO**
 17 **ENHANCE RETENTION OF EXPERIENCED**
 18 **NURSES.**

19 (a) ANNUAL REPORT.—(1) Subchapter II of chapter
 20 73 is amended by adding at the end the following new
 21 section:

22 **“§ 7324. Annual report on use of authorities to en-**
 23 **hance retention of experienced nurses**

24 “(a) ANNUAL REPORT.—Not later than January 31
 25 each year, the Secretary, acting through the Under Sec-

1 retary for Health, shall submit to Congress a report on
 2 the use during the preceding year of authorities for pur-
 3 poses of retaining experienced nurses in the Veterans
 4 Health Administration, as follows:

5 “(1) The authorities under chapter 76 of this
 6 title.

7 “(2) The authority under VA Directive 5102.1,
 8 relating to the Department of Veterans Affairs
 9 nurse qualification standard, dated November 10,
 10 1999, or any successor directive.

11 “(3) Any other authorities available to the Sec-
 12 retary for those purposes.

13 “(b) REPORT ELEMENTS.—Each report under sub-
 14 section (a) shall specify for the period covered by such re-
 15 port, for each Department medical facility and for each
 16 Veterans Integrated Service Network, the following:

17 “(1) The number of waivers requested under
 18 the authority referred to in subsection (a)(2), and
 19 the number of waivers granted under that authority,
 20 to promote to the Nurse II grade or Nurse III grade
 21 under the Nurse Schedule under section 7404(b)(1)
 22 of this title any nurse who has not completed a
 23 bachelors of science in nursing in a recognized
 24 school of nursing, set forth by age, race, and years

1 of experience of the individuals subject to such waiv-
 2 er requests and waivers, as the case may be.

3 “(2) The programs carried out to facilitate the
 4 use of nursing education programs by experienced
 5 nurses, including programs for flexible scheduling,
 6 scholarships, salary replacement pay, and on-site
 7 classes.”.

8 (2) The table of sections at the beginning of chapter
 9 73 is amended by inserting after the item relating to sec-
 10 tion 7323 the following new item:

“7324. Annual report on use of authorities to enhance retention of experienced
 nurses.”.

11 (b) INITIAL REPORT.—The initial report required
 12 under section 7324 of title 38, United States Code, as
 13 added by subsection (a), shall be submitted in 2002.

14 **SEC. 206. REPORT ON MANDATORY OVERTIME FOR NURSES**
 15 **AND NURSE ASSISTANTS IN DEPARTMENT OF**
 16 **VETERANS AFFAIRS FACILITIES.**

17 (a) REPORT.—Not later than 180 days after the date
 18 of the enactment of this Act, the Secretary of Veterans
 19 Affairs shall submit to the Committees on Veterans’ Af-
 20 fairs of the Senate and the House of Representatives a
 21 report on the mandatory overtime required of licensed
 22 nurses and nurse assistants providing direct patient care
 23 at Department of Veterans Affairs medical facilities dur-
 24 ing 2001.

1 (b) MANDATORY OVERTIME.—For purposes of the
 2 report under subsection (a), mandatory overtime shall con-
 3 sist of any period in which a nurse or nurse assistant is
 4 mandated or otherwise required, whether directly or indi-
 5 rectly, to work or be in on-duty status in excess of—

- 6 (1) a scheduled workshift or duty period;
- 7 (2) 12 hours in any 24-hour period; or
- 8 (3) 80 hours in any period of 14 consecutive
 9 days.

10 (c) ELEMENTS.—The report under subsection (a)
 11 shall include the following:

- 12 (1) A description of the amount of mandatory
 13 overtime described in that subsection at each De-
 14 partment medical facility during the period covered
 15 by the report.

- 16 (2) A description of the mechanisms employed
 17 by the Secretary to monitor overtime of the nurses
 18 and nurse assistants referred to in that subsection.

- 19 (3) An assessment of the effects of the manda-
 20 tory overtime of such nurses and nurse assistants on
 21 patient care, including its contribution to medical er-
 22 rors.

- 23 (4) Recommendations regarding mechanisms
 24 for preventing requirements for amounts of manda-

1 tory overtime in other than emergency situations by
 2 such nurses and nurse assistants.

3 (5) Any other matters that the Secretary con-
 4 siders appropriate.

5 **TITLE III—OTHER MATTERS**

6 **SEC. 301. ORGANIZATIONAL RESPONSIBILITY OF THE DI-** 7 **RECTOR OF THE NURSING SERVICE.**

8 Section 7306(a)(5) is amended by inserting “, and
 9 report directly to,” after “responsible to”.

10 **SEC. 302. COMPUTATION OF ANNUITY FOR PART-TIME** 11 **SERVICE PERFORMED BY CERTAIN HEALTH-** 12 **CARE PROFESSIONALS BEFORE APRIL 7, 1986.**

13 Section 7426 is amended—

14 (1) by redesignating subsection (c) as sub-
 15 section (d); and

16 (2) by inserting after subsection (b) the fol-
 17 lowing new subsection (c):

18 “(c) The provisions of subsection (b) shall not apply
 19 to the part-time service before April 7, 1986, of a reg-
 20 istered nurse, physician assistant, or expanded-function
 21 dental auxiliary. In computing the annuity under the ap-
 22 plicable provision of law specified in that subsection of an
 23 individual covered by the preceding sentence, the service
 24 described in that sentence shall be credited as full-time
 25 service.”.

1 **SEC. 303. MODIFICATION OF NURSE LOCALITY PAY AU-**
 2 **THORITIES.**

3 Section 7451 is amended—

4 (1) in subsection (d)(3)—

5 (A) in subparagraph (A), by striking “be-
 6 ginning rates of” each time it appears;

7 (B) in subparagraph (B), by striking “be-
 8 ginning rates of”; and

9 (C) in subparagraph (C)(i), by striking
 10 “beginning rates of” each time it appears;

11 (2) in subsection (d)(4)—

12 (A) by striking “or at any other time that
 13 an adjustment in rates of pay is scheduled to
 14 take place under this subsection” in the first
 15 sentence; and

16 (B) by striking the second sentence; and

17 (3) in subsection (e)(4)—

18 (A) in subparagraph (A), by striking
 19 “grade in a”;

20 (B) in subparagraph (B)—

21 (i) by striking “grade of a”; and

22 (ii) by striking “that grade” and in-
 23 serting “that position”; and

24 (C) in subparagraph (D), by striking
 25 “grade of a”.

1 **SEC. 304. TECHNICAL AMENDMENTS.**

2 Section 7631(b) is amended by striking “this sub-
3 section” each place it appears and inserting “this section”.

○