

Public Law 95-201
95th Congress

An Act

To amend the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, as amended, in order to extend the authority to enter into special-pay agreements with physicians and dentists; to amend title 38 of the United States Code to modify certain provisions relating to special-pay agreements; and for other purposes.

Nov. 23, 1977

[H.R. 8175]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Veterans' Administration Physician and Dentist Pay Comparability Amendments of 1977".

SEC. 2. Section 6(a)(2) of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975 (Public Law 94-123; 89 Stat. 669), as amended, is amended by striking out "September 30, 1977" and inserting in lieu thereof "September 30, 1978".

SEC. 3. (a) Section 4118 of title 38, United States Code, is amended by—

(1) amending subsection (a)(1) by—

(A) striking out "he" and inserting in lieu thereof "the Administrator";

(B) striking out "of," after "duration" and inserting in lieu thereof a comma and "of"; and

(C) striking out "number of years" after "specified" and inserting in lieu thereof "period";

(2) striking out in subsection (a)(3) "pursuant to" and inserting in lieu thereof "in accordance with", and inserting at the end thereof the following new sentence: "Not later than one year after making any such recruitment and retention determination and each year thereafter, the Chief Medical Director shall make a redetermination in accordance with such regulations, and, in the event any such determination was made more than one year prior to the date of enactment of this sentence, the Chief Medical Director shall make such redetermination not later than ninety days after such enactment date.";

(3) inserting at the end of subsection (e)(1) the following new sentences: "Any physician or dentist who entered into an agreement under this section and has not failed to refund any amount which such physician or dentist became obligated to refund under any such agreement shall be eligible to enter into a subsequent agreement under this section. Notwithstanding the provisions of the preceding two sentences, no agreement entered into under this section shall extend beyond September 30, 1981, and any agreement entered into under this section after September 30, 1980, may be for a period of less than one year if the expiration date thereof is September 30, 1981."; and

(4) amending subsection (e)(2)(A) by—

(A) inserting a comma and "or such lesser period of service as provided for in the final sentence of paragraph (1) of this subsection." after "service"; and

(B) striking out "the Chief Medical Director, pursuant to the regulations prescribed under this section, determines" and inserting in lieu thereof "the Chief Medical Director

Veterans'
Administration
Physician and
Dentist Pay
Comparability
Amendments of
1977.

38 USC 101 note.

38 USC 4118

note.

Redetermination.

Eligibility.

determines, in accordance with regulations prescribed under subsection (a) of this section.”.

Special-pay agreements, reevaluation. Report to Congress. 38 USC 4118 note. *Ante*, p. 1429. 2 USC 351 *et seq.*

(b) Prior to the execution after April 30, 1978, of any written agreement entered into with a physician or dentist under section 4118 of title 38, United States Code (as amended by subsection (a) of this section), (1) the Chief Medical Director of the Veterans' Administration shall reevaluate, in view of the executive level pay increase made pursuant to section 225 of the Federal Salary Act of 1967, effective February 27, 1977, with respect to the Veterans' Administration, the need for special-pay agreements, as authorized in such section 4118, in order to recruit and retain highly qualified physicians or dentists in each category of positions in the Department of Medicine and Surgery, and report to Congress not later than April 30, 1978, on the results of such reevaluation with respect to each such category; and (2) notwithstanding such section 4118, the Administrator of Veterans' Affairs, upon the recommendation of the Chief Medical Director and based upon such reevaluations, may promulgate a regulation reducing the amount of primary special pay for any such category to the extent the Administrator finds such primary special pay is not necessary to recruit and retain highly qualified physicians or dentists in such category. If a determination is made to reduce the amount of such primary special pay for any such category, the regulation promulgating the reduction shall be published in the Federal Register not less than thirty days prior to its effective date.

Publication in Federal Register.

38 USC 4118 note.

(c) The Administrator, not later than thirty days after the date of enactment of this Act, may enter into, under section 4118 of title 38, United States Code (as amended by subsection (a) of this section), with any otherwise eligible physician or dentist who was appointed to a position in the Department of Medicine and Surgery in the Veterans' Administration during the period beginning on October 1, 1977, and ending on the date of enactment of this Act, a special-pay agreement providing for the payment of special pay to such physician or dentist retroactive to the date such physician or dentist was appointed to such position.

English proficiency requirement.

SEC. 4. (a)(1) Section 4105 of title 38, United States Code, is amended by inserting at the end thereof the following new subsection: “(c) Notwithstanding any other provision of law, no person may be appointed under section 4104(1) of this title after the effective date of this subsection to serve in the Department of Medicine and Surgery in any direct patient-care capacity unless the Chief Medical Director determines, in accordance with regulations which the Administrator shall prescribe, that such person possesses such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable such person to carry out such person's health-care responsibilities satisfactorily.”.

(2) Section 4114 of title 38, United States Code, is amended by inserting at the end thereof the following new subsection:

“(f) No person may be appointed under this section after the effective date of this subsection to an occupational category described in section 4104(1) of this title or in subsection (b) of this section unless such person meets the requirements established in section 4105(c) of this title and regulations prescribed thereunder.”.

38 USC 4105 note.

Supra.

(3) Notwithstanding any other provision of law, with respect to persons other than those described in subsection (c) of section 4105 and subsection (f) of section 4114 of title 38, United States Code (as added by paragraphs (1) and (2) of this subsection), who are

appointed after the date of enactment of this Act in the Department of Medicine and Surgery in the Veterans' Administration in any direct patient-care capacity, and with respect to persons described in such subsections who are appointed after such enactment date and prior to January 1, 1978, the Administrator of Veterans' Affairs, upon the recommendation of the Chief Medical Director, shall take appropriate steps to provide reasonable assurance that such persons possess such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable such persons to carry out their health-care responsibilities satisfactorily.

(4) The amendments made by paragraphs (1) and (2) of this subsection shall be effective on January 1, 1978.

(b) Not later than April 1, 1978, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report (1) describing activities undertaken and the persons affected in order to carry out subsection (c) of section 4105 and subsection (f) of section 4114 of title 38, United States Code (as added by paragraphs (1) and (2) of subsection (a) of this section), and subsections (a) (3) and (c) of this section, and (2) providing—

(A) a description of the extent to which there are persons employed by the Veterans' Administration, on or prior to the date of enactment of this Act, in any direct patient-care capacity in the Department of Medicine and Surgery, who do not possess such basic proficiency in spoken and written English as produces the degree of communication with patients and other health-care personnel as is necessary to enable such persons to carry out their health-care responsibilities satisfactorily;

(B) data describing the characteristics and categories of positions of any such persons; and

(C) if, in the opinion of the Administrator, the description and data being provided pursuant to subclauses (A) and (B) of clause (2) of this subsection indicate that there is a problem with respect to the satisfactory performance of such health-care responsibilities arising from such lack of proficiency, a plan to promote the achievement of such proficiency as will enable the persons involved to carry out their health-care responsibilities satisfactorily as well as to deal with any need which the Administrator believes will exist to promote such proficiency on the part of persons appointed after such enactment date who the Administrator has reason to believe do not, in fact, possess such proficiency, including (i) the cost of implementing such plan in each of the succeeding five fiscal years, and (ii) the time periods in which such proficiency on the part of such persons (broken down by appropriate categories and characteristics) can be expected to be achieved.

(c) Section 5001 of title 38, United States Code, is amended by inserting at the end thereof the following new subsection:

“(h) When the Administrator determines, in accordance with regulations which the Administrator shall prescribe, that a Veterans' Administration facility serves a substantial number of veterans with limited English-speaking ability, the Administrator shall establish and implement procedures, upon the recommendation of the Chief Medical Director, to ensure the identification of sufficient numbers of individuals on such facility's staff who are fluent in both the

Effective date.
38 USC 4105
note.
Report to
congressional
committees.
38 USC 4105
note.
Ante, p. 1430.

Dual language
speaking staff
members,
identification.

language most appropriate to such veterans and in English and whose responsibilities shall include providing guidance to such veterans and to appropriate Veterans' Administration staff members with respect to cultural sensitivities and bridging linguistic and cultural differences."

Podiatrists and
optometrists.

SEC. 5. (a) (1) The salary schedule under the heading "SECTION 4103 SCHEDULE" in section 4107 of title 38, United States Code, is amended by striking out "\$36,338 minimum to \$46,026 maximum" after "Director of Podiatric Service," and inserting in lieu thereof "\$39,629 minimum to \$50,197 maximum."

(2) The salary schedule under the heading "CLINICAL PODIATRIST AND OPTOMETRIST SCHEDULE" in section 4107 of title 38, United States Code, is amended to read as follows:

"Chief grade, \$33,789 minimum to \$43,923 maximum.

"Senior grade, \$28,725 minimum to \$37,347 maximum.

"Intermediate grade, \$24,308 minimum to \$31,598 maximum.

"Full grade, \$20,442 minimum to \$26,571 maximum.

"Associate grade, \$17,056 minimum to \$22,177 maximum."

Effective date.
38 USC 4107
note.

(3) The amendments made by paragraphs (1) and (2) of this subsection shall be effective retroactive to the period beginning on October 21, 1976, and ending on October 8, 1977. Notwithstanding any other provision of law, the Administrator of Veterans' Affairs shall establish retroactively for such period intermediate rates of basic pay between the minimum and maximum pay ranges prescribed in the salary schedule under the heading "SECTION 4103 SCHEDULE" for the Director of Podiatric Service and in the "CLINICAL PODIATRIST AND OPTOMETRIST SCHEDULE" in section 4107 of title 38, United States Code.

Employment
conversion,
effective date.
38 USC 4107
note.

(b) Notwithstanding any other provision of law, each person employed in the Department of Medicine and Surgery in the Veterans' Administration as a podiatrist or optometrist shall be converted from employment under part III of title 5, United States Code, to full-time employment under section 4104(1), or temporary full-time employment or part-time employment under section 4114(a)(1)(A), of title 38, United States Code, and each such conversion (including application of the applicable rates of basic pay provided for in the amendments made by subsection (a) of this section) shall be effective retroactive to October 21, 1976, or the most recent date of appointment in the Department of Medicine and Surgery of the employee concerned under such part III, whichever is the later.

Approved November 23, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-585 (Comm. on Veterans' Affairs).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Sept. 12, considered and passed House.

Nov. 3, considered in Senate.

Nov. 4, considered and passed Senate, amended; House concurred in Senate amendments.