

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116-283, div. A, title XI, §1103(d)(2), Jan. 1, 2021, 134 Stat. 3888, provided that: "The amendments made by paragraph (1) [amending this section] shall apply with respect to any event for which leave may be taken under subchapter V of chapter 63 of title 5, United States Code, occurring on or after October 1, 2020."

§ 7426. Retirement rights

(a) Except as provided in subsection (b), persons appointed to the Administration shall be subject to the provisions of and entitled to benefits under subchapter III of chapter 83 of title 5 or subchapter II of chapter 84 of title 5, whichever is applicable.

(b)(1) In computing the annuity under subchapter III of chapter 83, or subchapter II of chapter 84, of title 5 of an individual who retires under such subchapter (other than under section 8337 or 8451 of such title) after December 31, 1981, and who served at any time on a less-than-full-time basis in a position in the Administration to which such individual was appointed under subchapter I—

(A) for the purpose of determining such individual's average pay, as defined by section 8331(4) or 8401(3) of title 5, whichever is applicable, the annual rate of basic pay for full-time service shall be deemed to be such individual's rate of basic pay; and

(B) the amount of such individual's annuity as computed under section 8339 or 8415 of title 5 (before application of any reduction required by subsection (i) of section 8339) shall be multiplied by the fraction equal to the ratio that that individual's total full-time equivalent service bears to that individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable.

(2) For the purposes of paragraph (1)(B), an individual's full-time equivalent service is the individual's creditable service as determined under section 8332 or 8411 of title 5, whichever is applicable, except that any period of service of such individual served on a less-than-full-time basis shall be prorated based on the fraction such service bears to full-time service. For the purposes of the preceding sentence, full-time service shall be considered to be 80 hours of service per biweekly pay period.

(3) A survivor annuity computed under section 8341, or subchapter IV of chapter 84, of title 5 based on the service of an individual described in paragraph (1) shall be computed based upon such individual's annuity as determined in accordance with such paragraph.

(c) The provisions of subsection (b) shall not apply to the part-time service before April 7, 1986, of a registered nurse, physician assistant, or expanded-function dental auxiliary. In computing the annuity under the applicable provision of law specified in that subsection of an individual covered by the preceding sentence, the service described in that sentence shall be credited as full-time service.

(Added Pub. L. 102-40, title IV, §401(b)(3)(B), May 7, 1991, 105 Stat. 231; amended Pub. L. 102-585, title V, §522, Nov. 4, 1992, 106 Stat. 4959; Pub. L.

106-398, §1 [[div. A], title X, §1087(g)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A-294; Pub. L. 107-135, title I, §132, Jan. 23, 2002, 115 Stat. 2454.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4107(i) and 4109 of this title prior to the repeal of those sections as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-135 added subsec. (c).

2000—Subsec. (c). Pub. L. 106-398 struck out subsec. (c) which read as follows: "The Secretary may authorize an exception to the restrictions in subsections (a), (b), and (c) of section 5532 of title 5 if necessary to meet special or emergency employment needs which result from a severe shortage of well-qualified candidates in physician positions, and registered nurse positions, which otherwise cannot be readily met. The authority of the Secretary under the preceding sentence with respect to registered-nurse positions expires on December 31, 1994."

1992—Subsec. (c). Pub. L. 102-585 substituted "December 31, 1994" for "September 30, 1992".

SUBCHAPTER III—PAY FOR PHYSICIANS, PODIATRISTS, AND DENTISTS**Editorial Notes**

CODIFICATION

This subchapter was originally added by Pub. L. 102-40, May 7, 1991, 105 Stat. 187, and amended by Pub. L. 102-405, Oct. 9, 1992, 106 Stat. 1972; Pub. L. 104-262, Oct. 9, 1996, 110 Stat. 3177; Pub. L. 103-446, Nov. 2, 1994, 108 Stat. 4645; Pub. L. 106-419, Nov. 1, 2000, 114 Stat. 1822. This subchapter is shown here, however, as having been added by Pub. L. 108-445, §3(b), Dec. 3, 2004, 118 Stat. 2636, without reference to those intervening amendments because of the general amendment of this subchapter by Pub. L. 108-445.

AMENDMENTS

2019—Pub. L. 116-12, §1(b)(3), Apr. 8, 2019, 133 Stat. 845, inserted ", PODIATRISTS," after "PHYSICIANS" in subchapter heading.

2004—Pub. L. 108-445, §3(b), Dec. 3, 2004, 118 Stat. 2636, substituted "PAY FOR PHYSICIANS AND DENTISTS" for "SPECIAL PAY FOR PHYSICIANS AND DENTISTS" in subchapter heading.

§ 7431. Pay

(a) ELEMENTS OF PAY.—Pay of physicians, podiatrists, and dentists in the Veterans Health Administration shall consist of three elements as follows:

- (1) Base pay as provided for under subsection (b).
- (2) Market pay as provided for under subsection (c).
- (3) Performance pay as provided under subsection (d).

(b) BASE PAY.—One element of pay for physicians, podiatrists, and dentists shall be base pay. Base pay shall meet the following requirements:

- (1) Each physician, podiatrist, and dentist is entitled to base pay determined under the Physician, Podiatrist, and Dentist Base and Longevity Pay Schedule.
- (2) The Physician, Podiatrist, and Dentist Base and Longevity Pay Schedule is composed

of 15 rates of base pay designated, from the lowest rate of pay to the highest rate of pay, as base pay steps 1 through 15.

(3) The rate of base pay payable to a physician, podiatrist, or dentist is based on the total number of the years of the service of the physician, podiatrist, or dentist in the Veterans Health Administration as follows:

For a physician, podiatrist, or dentist with total service of:	The rate of base pay is the rate payable for:
two years or less	step 1
more than 2 years and not more than 4 years	step 2
more than 4 years and not more than 6 years	step 3
more than 6 years and not more than 8 years	step 4
more than 8 years and not more than 10 years	step 5
more than 10 years and not more than 12 years	step 6
more than 12 years and not more than 14 years	step 7
more than 14 years and not more than 16 years	step 8
more than 16 years and not more than 18 years	step 9
more than 18 years and not more than 20 years	step 10
more than 20 years and not more than 22 years	step 11
more than 22 years and not more than 24 years	step 12
more than 24 years and not more than 26 years	step 13
more than 26 years and not more than 28 years	step 14
more than 28 years	step 15.

(4) At the same time as rates of basic pay are increased for a year under section 5303 of title 5, the Secretary shall increase the amount of base pay payable under this subsection for that year by a percentage equal to the percentage by which rates of basic pay are increased under such section for that year.

(5) The non-foreign cost of living adjustment allowance authorized under section 5941 of title 5 for physicians, podiatrists, and dentists whose pay is set under this section shall be determined as a percentage of base pay only.

(c) MARKET PAY.—One element of pay for physicians, podiatrists, and dentists shall be market pay. Market pay shall meet the following requirements:

(1) Each physician, podiatrist, and dentist is eligible for market pay.

(2) Market pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment (as defined by the Secretary) of a particular physician, podiatrist, or dentist in a facility of the Department of Veterans Affairs.

(3) The annual amount of the market pay payable to a physician, podiatrist, or dentist shall be determined by the Secretary on a case-by-case basis.

(4) The determination of the amount of market pay of a physician, podiatrist, or dentist shall take into account—

(A) the level of experience of the physician, podiatrist, or dentist in the specialty

or assignment of the physician, podiatrist, or dentist;

(B) the need for the specialty or assignment of the physician, podiatrist, or dentist at the medical facility of the Department concerned;

(C) the health care labor market for the specialty or assignment of the physician, podiatrist, or dentist, which may cover any geographic area the Secretary considers appropriate for the specialty or assignment;

(D) the board certifications, if any, of the physician, podiatrist, or dentist;

(E) the prior experience, if any, of the physician, podiatrist, or dentist as an employee of the Veterans Health Administration; and

(F) such other considerations as the Secretary considers appropriate.

(5) The amount of market pay of a physician, podiatrist, or dentist shall be evaluated by the Secretary not less often than once every 24 months. The amount of market pay may be adjusted as the result of an evaluation under this paragraph. A physician, podiatrist, or dentist whose market pay is evaluated under this paragraph shall receive written notice of the results of such evaluation in accordance with procedures prescribed under section 7433 of this title.

(6) No adjustment of the amount of market pay of a physician, podiatrist, or dentist under paragraph (5) may result in a reduction of the amount of market pay of the physician, podiatrist, or dentist while in the same position or assignment at the medical facility of the Department concerned, unless there is a change in board certification or reduction of privileges.

(d) PERFORMANCE PAY.—(1) One element of pay for physicians, podiatrists, and dentists shall be performance pay.

(2) Performance pay shall be paid to a physician, podiatrist, or dentist on the basis of the physician's or dentist's achievement of specific goals and performance objectives prescribed by the Secretary.

(3) The Secretary shall ensure that each physician, podiatrist, and dentist of the Department is advised of the specific goals or objectives that are to be measured by the Secretary in determining the eligibility of that physician, podiatrist, or dentist for performance pay.

(4) The amount of the performance pay payable to a physician, podiatrist, or dentist may vary annually on the basis of individual achievement or attainment of the goals or objectives applicable to the physician, podiatrist, or dentist under paragraph (2).

(5) The amount of performance pay payable to a physician, podiatrist, or dentist in a fiscal year shall be determined in accordance with regulations prescribed by the Secretary, but may not exceed the lower of—

(A) \$15,000; or

(B) the amount equal to 7.5 percent of the sum of the base pay and the market pay payable to such physician, podiatrist, or dentist in that fiscal year.

(6) A failure to meet goals or objectives applicable to a physician, podiatrist, or dentist under

paragraph (2) may not be the sole basis for an adverse personnel action against that physician, podiatrist, or dentist.

(e) **REQUIREMENTS AND LIMITATIONS ON TOTAL PAY.**—(1)(A) Not less often than once every two years, the Secretary shall prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid under this section to physicians and the minimum and maximum amounts of annual pay that may be paid under this section to podiatrists and dentists.

(B) The Secretary may prescribe for Department-wide applicability under this paragraph separate minimum and maximum amounts of pay for a specialty or assignment. If the Secretary prescribes separate minimum and maximum amounts for a specialty or assignment, the Secretary may establish up to four tiers of minimum and maximum amounts for such specialty or assignment and prescribe for each tier a minimum amount and a maximum amount that the Secretary determines appropriate for the professional responsibilities, professional achievements, and administrative duties of the physicians, podiatrists, or dentists (as the case may be) whose pay is set within that tier.

(C) Amounts prescribed under this paragraph shall be published in the Federal Register, and shall not take effect until at least 60 days after the date of publication.

(2) Except as provided in paragraph (3) and subject to paragraph (4), the sum of the total amount of the annual rate of base pay payable to a physician, podiatrist, or dentist under subsection (b) and the market pay determined for the physician, podiatrist, or dentist under subsection (c) may not be less than the minimum amount, nor more than the maximum amount, applicable to specialty or assignment of the physician, podiatrist, or dentist under paragraph (1).

(3) The sum of the total amount of the annual rate of base pay payable to a physician, podiatrist, or dentist under subsection (b) and the market pay determined for the physician, podiatrist, or dentist under subsection (c) may exceed the maximum amount applicable to the specialty or assignment of the physician, podiatrist, or dentist under paragraph (1) as a result of an adjustment under paragraph (3) or (4) of subsection (b).

(4) In no case may the total amount of compensation paid to a physician, podiatrist, or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(f) **TREATMENT OF PAY.**—Pay under subsections (b) and (c) of this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

(g) **ANCILLARY EFFECTS OF DECREASES IN PAY.**—(1) A decrease in pay of a physician, podiatrist, or dentist resulting from an adjustment in the amount of market pay of the physician, podiatrist, or dentist under subsection (c) shall not be treated as an adverse action.

(2) If the pay of a physician, podiatrist, or dentist is reduced under this subchapter as a result of an involuntary reassignment in connection

with a disciplinary action taken against the physician, podiatrist, or dentist, the involuntary reassignment shall be subject to appeal under subchapter V of this chapter.

(h) **DELEGATION OF RESPONSIBILITIES.**—The Secretary may delegate to an appropriate officer or employee of the Department any responsibility of the Secretary under subsection (c), (d), or (e) except for the responsibilities of the Secretary under subsection (e)(1).

(Added Pub. L. 108-445, §3(b), Dec. 3, 2004, 118 Stat. 2636; amended Pub. L. 111-163, title VI, §601(f), May 5, 2010, 124 Stat. 1170; Pub. L. 114-315, title VI, §615, Dec. 16, 2016, 130 Stat. 1577; Pub. L. 116-12, §1(b)(1), Apr. 8, 2019, 133 Stat. 845.)

Editorial Notes

PRIOR PROVISIONS

A prior section 7431, added Pub. L. 102-40, title I, §102, May 7, 1991, 105 Stat. 188; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984, related to authority of Secretary to provide for special pay, prior to the general amendment of this subchapter by Pub. L. 108-445.

AMENDMENTS

2019—Pub. L. 116-12, §1(b)(1)(A)–(E), substituted “physician, podiatrist, or dentist” for “physician or dentist”, “physicians, podiatrists, or dentists” for “physicians or dentists”, “physician, podiatrist, and dentist” for “physician and dentist”, “physicians, podiatrists, and dentists” for “physicians and dentists”, and “Physician, Podiatrist, and Dentist” for “Physician and Dentist” wherever appearing.

Subsec. (e)(1)(A). Pub. L. 116-12, §1(b)(1)(F), inserted “podiatrists and” before “dentists.”

2016—Subsec. (c)(4) to (7). Pub. L. 114-315 redesignated pars. (5) to (7) as (4) to (6), respectively, substituted “under paragraph (5)” for “under paragraph (6)” in par. (6), and struck out former par. (4) which read as follows:

“(A) In determining the amount of market pay for physicians or dentists, the Secretary shall consult two or more national surveys of pay for physicians or dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians or dentists, as applicable.

“(B)(i) In determining the amount of the market pay for a particular physician or dentist under this subsection, and in determining a tier (if any) to apply to a physician or dentist under subsection (e)(1)(B), the Secretary shall consult with and consider the recommendations of an appropriate panel or board composed of physicians or dentists (as applicable). The Secretary may exempt physicians and dentists occupying administrative or executive leadership positions from the requirements of the previous sentence.

“(ii) A physician or dentist may not be a member of the panel or board that makes recommendations under clause (i) with respect to the market pay of such physician or dentist, as the case may be.

“(iii) The Secretary should, to the extent practicable, ensure that a panel or board consulted under this subparagraph includes physicians or dentists (as applicable) who are practicing clinicians and who do not hold management positions in the medical facility of the Department at which the physician or dentist subject to the consultation is employed.”

2010—Subsec. (b)(5). Pub. L. 111-163, §601(f)(1), added par. (5).

Subsec. (c)(4)(B)(i). Pub. L. 111-163, §601(f)(2), inserted at end “The Secretary may exempt physicians and dentists occupying administrative or executive leadership positions from the requirements of the previous sentence.”

Subsec. (c)(7). Pub. L. 111-163, §601(f)(3), substituted “concerned, unless there is a change in board certification or reduction of privileges.” for “concerned.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 108-445, §3(d), Dec. 3, 2004, 118 Stat. 2641, provided that:

“(1) Notwithstanding the 60-day waiting requirement in section 7431(e)(1)(C) of title 38, United States Code (as amended by subsection (b)), pay provided for a physician or dentist under subchapter III of chapter 74 of such title, as amended by subsection (b), shall take effect on the first day of the first pay period applicable to such physician or dentist that begins on or after January 1, 2006.

“(2) Pay provided for the Under Secretary for Health under subchapter III of chapter 74 of title 38, United States Code, as amended by this section shall take effect on the first day of the first pay period applicable to the Under Secretary that begins on or after January 1, 2006.”

PILOT PROGRAM ON INCENTIVES FOR PHYSICIANS WHO ASSUME INPATIENT RESPONSIBILITIES AT COMMUNITY HOSPITALS IN HEALTH PROFESSIONAL SHORTAGE AREAS

Pub. L. 111-163, title III, §306, May 5, 2010, 124 Stat. 1152, provided that:

“(a) PILOT PROGRAM REQUIRED.—The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility [sic] and advisability of each of the following:

“(1) The provision of financial incentives to eligible physicians who obtain and maintain inpatient privileges at community hospitals in health professional shortage areas in order to facilitate the provision by such physicians of primary care and mental health services to veterans at such hospitals.

“(2) The collection of payments from third-party providers for care provided by eligible physicians to nonveterans while discharging inpatient responsibilities at community hospitals in the course of exercising the privileges described in paragraph (1).

“(b) ELIGIBLE PHYSICIANS.—For purposes of this section, an eligible physician is a primary care or mental health physician employed by the Department of Veterans Affairs on a full-time basis.

“(c) DURATION OF PROGRAM.—The pilot program shall be carried out during the 3-year period beginning on the date of the commencement of the pilot program.

“(d) LOCATIONS.—

“(1) IN GENERAL.—The pilot program shall be carried out at not less than five community hospitals in each of not less than two Veterans Integrated Services Networks. The hospitals shall be selected by the Secretary using the results of the survey required under subsection (e).

“(2) QUALIFYING COMMUNITY HOSPITALS.—A community hospital may be selected by the Secretary as a location for the pilot program if—

“(A) the hospital is located in a health professional shortage area; and

“(B) the number of eligible physicians willing to assume inpatient responsibilities at the hospital (as determined using the result of the survey) is sufficient for purposes of the pilot program.

“(e) SURVEY OF PHYSICIAN INTEREST IN PARTICIPATION.—

“(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [May 5, 2010], the Secretary shall conduct a survey of eligible physicians to determine the extent of the interest of such physicians in participating in the pilot program.

“(2) ELEMENTS.—The survey shall disclose the type, amount, and nature of the financial incentives to be provided under subsection (h) to physicians participating in the pilot program.

“(f) PHYSICIAN PARTICIPATION.—

“(1) IN GENERAL.—The Secretary shall select physicians for participation in the pilot program from among eligible physicians who—

“(A) express interest in participating in the pilot program in the survey conducted under subsection (e);

“(B) are in good standing with the Department; and

“(C) primarily have clinical responsibilities with the Department.

“(2) VOLUNTARY PARTICIPATION.—Participation in the pilot program shall be voluntary. Nothing in this section shall be construed to require a physician working for the Department to assume inpatient responsibilities at a community hospital unless otherwise required as a term or condition of employment with the Department.

“(g) ASSUMPTION OF INPATIENT PHYSICIAN RESPONSIBILITIES.—

“(1) IN GENERAL.—Each eligible physician selected for participation in the pilot program shall assume and maintain inpatient responsibilities, including inpatient responsibilities with respect to nonveterans, at one or more community hospitals selected by the Secretary for participation in the pilot program under subsection (d).

“(2) COVERAGE UNDER FEDERAL TORT CLAIMS ACT.—If an eligible physician participating in the pilot program carries out on-call responsibilities at a community hospital where privileges to practice at such hospital are conditioned upon the provision of services to individuals who are not veterans while the physician is on call for such hospital, the provision of such services by the physician shall be considered an action within the scope of the physician's office or employment for purposes of chapter 171 of title 28, United States Code (commonly referred to as the ‘Federal Tort Claims Act’).

“(h) COMPENSATION.—

“(1) IN GENERAL.—The Secretary shall provide each eligible physician participating in the pilot program with such compensation (including pay and other appropriate compensation) as the Secretary considers appropriate to compensate such physician for the discharge of any inpatient responsibilities by such physician at a community hospital for which such physician would not otherwise be compensated by the Department as a full-time employee of the Department.

“(2) WRITTEN AGREEMENT.—The amount of any compensation to be provided a physician under the pilot program shall be specified in a written agreement entered into by the Secretary and the physician for purposes of the pilot program.

“(3) TREATMENT OF COMPENSATION.—The Secretary shall consult with the Director of the Office of Personnel Management on the inclusion of a provision in the written agreement required under paragraph (2) that describes the treatment under Federal law of any compensation provided a physician under the pilot program, including treatment for purposes of retirement under the civil service laws.

“(i) COLLECTIONS FROM THIRD PARTIES.—In carrying out the pilot program for the purpose described in subsection (a)(2), the Secretary shall implement a variety and range of requirements and mechanisms for the collection from third-party payors of amounts to reimburse the Department for health care services provided to nonveterans under the pilot program by eligible physicians discharging inpatient responsibilities under the pilot program.

“(j) REPORT.—Not later than 1 year after the date of the enactment of this Act [May 5, 2010] and annually thereafter, the Secretary shall submit to Congress a report on the pilot program, including the following:

“(1) The findings of the Secretary with respect to the pilot program.

“(2) The number of veterans and nonveterans provided inpatient care by physicians participating in the pilot program.

“(3) The amounts payable and collected under subsection (i).

“(k) DEFINITIONS.—In this section:

“(1) HEALTH PROFESSIONAL SHORTAGE AREA.—The term ‘health professional shortage area’ has the meaning given the term in section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)).

“(2) INPATIENT RESPONSIBILITIES.—The term ‘inpatient responsibilities’ means on-call responsibilities customarily required of a physician by a community hospital as a condition of granting privileges to the physician to practice in the hospital.”

TRANSITION PROVISIONS

Pub. L. 108-445, §3(e), Dec. 3, 2004, 118 Stat. 2641, provided that:

“(1) PHYSICIANS AND DENTISTS.—

“(A) PAY.—(i) The amount of the pay payable on and after the date of the enactment of this Act [Dec. 3, 2004] to a physician or dentist in receipt of pay under section 7404 or 7405 of title 38, United States Code, as of the day before such date shall continue to be determined under such section (as in effect on the day before such date) until the effective date that is applicable under subsection (d) [set out as a note above] to such physician or dentist, as the case may be.

“(ii) A physician or dentist appointed or reassigned on or after the date of the enactment of this Act, but before the effective date applicable under subsection (d) to such physician or dentist, shall be compensated in accordance with applicable provisions of section 7404 or 7405 of title 38, United States Code (as in effect on the day before date of the enactment of this Act), until such effective date.

“(B) SPECIAL PAY.—(i) A special pay agreement entered into by a physician or dentist under subchapter III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act shall terminate on the date of the enactment of this Act. However, a physician or dentist in receipt of special pay pursuant to such an agreement on that date shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) to such physician or dentist.

“(ii) A physician or dentist described in subparagraph (A)(ii) may be paid special pay under applicable provisions of section 7433, 7434, 7435, or 7436 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of the appointment or reassignment of such physician or dentist, as the case may be, and ending on the effective date applicable under subsection (d) to such physician or dentist. However, no special pay agreement shall be required for the payment of special pay under this clause.

“(C) TREATMENT OF SPECIAL PAY.—(i) Special pay paid under subparagraph (B) to a physician or dentist during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to such physician or dentist shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act).

“(ii) Special pay paid to a physician or dentist under section 7438 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

“(D) PRESERVATION OF PAY.—The amount of pay paid to a physician or dentist after the effective date of this Act shall not be less than the amount of pay paid to such physician or dentist on the day before the effective date of this Act while such physician or dentist remains in the same position or assignment.

“(2) UNDER SECRETARY FOR HEALTH.—

“(A) SPECIAL PAY.—(i) The current special pay agreement entered into by the Under Secretary for

Health under subchapters I and III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act [Dec. 3, 2004] shall terminate on the date of the enactment of this Act. However, the Under Secretary shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) [set out as a note above] to the Under Secretary.

“(ii) An individual appointed as Under Secretary for Health on or after the date of the enactment of this Act and before the effective date applicable under subsection (d) to the Under Secretary shall be paid special pay in accordance with the provisions of sections 7432(d)(2) and 7433 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of appointment and ending on such effective date. However, no special pay agreement shall be required for the payment of special pay under this clause.

“(B) TREATMENT OF SPECIAL PAY.—Special pay paid under subparagraph (A) during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to the Under Secretary—

“(i) shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act); and

“(ii) shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.”

INITIAL RATES OF BASE PAY FOR PHYSICIANS AND DENTISTS

Pub. L. 108-445, §3(c), Dec. 3, 2004, 118 Stat. 2641, provided that: “The initial rates of base pay established for the base pay steps under the Physician and Dentist Base and Longevity Pay Schedule provided in section 7431(b) of title 38, United States Code (as added by subsection (b)), are as follows:

“Base Pay Step:	Rate of Pay:
1	\$90,000
2	\$93,000
3	\$96,000
4	\$99,000
5	\$102,000
6	\$105,000
7	\$108,000
8	\$111,000
9	\$114,000
10	\$117,000
11	\$120,000
12	\$123,000
13	\$126,000
14	\$129,000
15	\$132,000.”

§ 7432. Pay of Under Secretary for Health

(a) BASE PAY.—The base pay of the Under Secretary for Health shall be the annual rate of basic pay for positions at Level III of the Executive Schedule under section 5314 of title 5.

(b) MARKET PAY.—(1) In the case of an Under Secretary for Health who is also a physician or dentist, in addition to the base pay specified in subsection (a) the Under Secretary for Health may also be paid the market pay element of pay of physicians and dentists under section 7431(c) of this title.

(2) The amount of market pay of the Under Secretary for Health under this subsection shall be established by the Secretary.

(3) In establishing the amount of market pay of the Under Secretary for Health under this