(Added Pub. L. 117–328, div. U, title I, §182(a), Dec. 29, 2022, 136 Stat. 5436.)

## CHAPTER 74—VETERANS HEALTH ADMINISTRATION—PERSONNEL

SUBCHAPTER I—APPOINTMENTS



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### Editorial Notes

AMENDMENTS

2022—Pub. L. 117–328, div. U, title I, §112(b), Dec. 29, 2022, 136 Stat. 5414, added item 7414.

Pub. L. 117–168, §1(b)(2), title IX, §906(b)(1), Aug. 10, 2022, 136 Stat. 1759, 1812, added item 7404A.

2019—Pub. L. 116–12, §1(b)(4), Apr. 8, 2019, 133 Stat. 845, substituted ''PAY FOR PHYSICIANS, PODIATRISTS, AND DENTISTS'' for ''PAY FOR PHYSICIANS AND DENTISTS'' in item for subchapter III.

2018—Pub. L. 115–182, title V, §502(a)(2), June 6, 2018, 132 Stat. 1475, which directed amendment of the table of sections for chapter 74 by adding item 7413 after item 7412, without specifying the Code title to be amended, was executed to the table of sections for this chapter, to reflect the probable intent of Congress.

2014—Pub. L. 113–146, §301(a)(2), Aug. 7, 2014, 128 Stat. 1784, added item 7412.

2010—Pub. L. 111–163, title VI, §602(a)(2), May 5, 2010, 124 Stat. 1173, added item 7459.

2004—Pub. L. 108–445, §§3(g), 4(a)(2), Dec. 3, 2004, 118 Stat. 2643, 2645, substituted ''PAY FOR PHYSICIANS AND DENTISTS'' for ''SPECIAL PAY FOR PHYSICIANS AND DENTISTS'' in item for subchapter III, ''Pay'' for ''Special pay: authority'' in item 7431, ''Pay of Under Secretary for Health'' for ''Special pay: written agreements'' in item 7432, ''Administrative matters'' for ''Special pay: full-time physicians'' in item 7433, struck out items 7434 ''Special pay: part-time physicians'', 7435 ''Special pay: full-time dentists'', 7436 ''Special pay: part-time dentists'', 7437 ''Special pay: general provisions'', 7438 ''Special pay: coordination with other benefits laws'', 7439 ''Periodic review of pay of physicians and dentists; quadrennial report'', and 7440 ''Annual report'', and added item 7456A.

1991—Pub. L. 102–40, title I, §§102, 103(a)(2), title II, §203(b), title IV, §401(b)(1), May 7, 1991, 105 Stat. 187, 199, 207, 221, added chapter heading and analysis.

### SUBCHAPTER I—APPOINTMENTS

### § 7401. Appointments in Veterans Health Administration

There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the Office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

(1) Physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries.

(2) Scientific and professional personnel, such as microbiologists, chemists, and biostatisticians.

(3) Audiologists, licensed hearing aid specialists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists,

pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient specialists, statisticians, economists, informaticists, data scientists, and and[1] such other classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department subject to the following requirements:

(A) Such other classes of health care occupations—

(i) are not occupations relating to administrative, clerical, or physical plant maintenance and protective services;

(ii) would otherwise receive basic pay in accordance with the General Schedule under section 5332 of title 5;

(iii) provide, as determined by the Secretary, direct patient care services or services incident to direct patient services; and

(iv) would not otherwise be available to provide medical care or treatment for veterans.

(B) Not later than 45 days before the Secretary appoints any personnel for a class of health care occupations that is not specifically listed in this paragraph, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate, the Committee on Veterans' Affairs of the House of Representatives, and the Office of Management and Budget notice of such appointment.

(C) Before submitting notice under subparagraph (B), the Secretary shall solicit comments from any labor organization representing employees in such class and include such comments in such notice.

(4) Directors of medical centers and directors of Veterans Integrated Service Networks with demonstrated ability in the medical profession, in health care administration, or in health care fiscal management.

(Added Pub. L. 102–40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102–405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108–170, title III, §§ 301(a)(1), 302(a), Dec. 6, 2003, 117 Stat. 2054, 2057; Pub. L. 108–422, title V, § 502, Nov. 30, 2004, 118 Stat. 2396; Pub. L. 109–461, title II, § 201(a), Dec. 22, 2006, 120 Stat. 3409; Pub. L. 111–163, title VI, § 601(a), May 5, 2010, 124 Stat. 1167; Pub. L. 114–58, title VI, § 601(23), Sept. 30, 2015, 129 Stat. 539; Pub. L. 114–256, § 4(a)(1), Dec. 14, 2016, 130 Stat. 1347; Pub. L. 115–41, title II, § 207(a), June 23, 2017, 131 Stat. 877; Pub. L. 117–328, div. U, title I, § 183, Dec. 29, 2022, 136 Stat. 5436.)

### Editorial Notes

#### Prior Provisions

Provisions similar to those in this section were contained in section 4104 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—Par. (3). Pub. L. 117–328 inserted ''statisticians, economists, informaticists, data scientists, and'' after ''blind rehabilitation outpatient specialists,'' in introductory provisions.

2017—Par. (4). Pub. L. 115–41 added par. (4).

2016—Par. (3). Pub. L. 114–256 inserted ''licensed hearing aid specialists,'' after ''Audiologists,'' in introductory provisions.

2015—Par. (3)(A)(ii). Pub. L. 114–58 struck out ''that'' before ''would otherwise receive''.

2010—Par. (3). Pub. L. 111–163 inserted ''nurse assistants,'' after ''licensed practical or vocational nurses,'', substituted ''blind rehabilitation outpatient specialists, and such other classes of health care occupations as the Secretary considers necessary for the recruitment and retention needs of the Department subject to the following requirements:'' for ''and blind rehabilitation outpatient specialists.'', and added subpars. (A) to (C).

2006—Par. (3). Pub. L. 109–461 inserted ''marriage and family therapists, licensed professional mental health counselors,'' after ''social workers,''.

2004—Par. (3). Pub. L. 108–422 substituted ''technologists, dental hygienists, dental assistants'' for ''and dental technologists'' and ''technologists, therapeutic radiologic technologists, social workers, blind rehabilitation specialists, and blind rehabilitation outpatient specialists'' for ''technicians, therapeutic radiologic technicians, and social workers''.

2003—Pub. L. 108–170, § 302(a)(1), substituted ''health'' for ''medical'' in introductory provisions.

Par. (1). Pub. L. 108–170, § 302(a)(2), inserted ''chiropractors,'' after ''podiatrists,''.

Par. (2). Pub. L. 108–170, § 301(a)(1)(A), added par. (2) and struck out former par. (2) which read as follows: ''Psychologists (other than those described in paragraph (3)), dietitians, and other scientific and professional personnel, such as microbiologists, chemists, biostatisticians, and medical and dental technologists.''

Par. (3). Pub. L. 108–170, § 301(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: ''Clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Secretary, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.''

1992—Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

### Statutory Notes and Related Subsidiaries

#### Effective Date of 2003 Amendment

Amendment by section 302(a) of 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.

#### Third Party Review of Appointees in Veterans Health Administration Who Had a License Terminated for Cause and Notice to Individuals Treated by Those Appointees if Determined That an Episode of Care or Services That They Received Was Below the Standard of Care

Pub. L. 117–328, div. U, title I, § 111, Dec. 29, 2022, 136 Stat. 5410, provided that:

''(a) Third Party Review.—

''(1) In general.—Not later than 180 days after the date of the enactment of this Act [Dec. 29, 2022], the Secretary of Veterans Affairs shall enter into a contract or other agreement with an organization that is not part of the Federal Government to conduct a clinical review for quality management of hospital care or medical services furnished by covered providers.

[1] So in original.

''(2) QUALIFICATIONS.—The Secretary shall ensure that each review of a covered provider under this subsection is performed by an individual who is licensed in the same specialty as the covered provider.

''(b) NOTICE TO PATIENTS TREATED BY COVERED PROVIDERS.—With respect to hospital care or medical services furnished by a covered provider under the laws administered by the Secretary, if a clinical review for quality management under subsection (a) determines that the standard of care was not met during an episode of care, the Secretary shall notify the individual who received such care or services from the covered provider as described in applicable policy of the Veterans Heath Administration.

''(c) DEFINITIONS.—In this section:

''(1) COVERED PROVIDER.—The term 'covered provider' means an individual who—

''(A) was appointed to the Veterans Health Administration under section 7401 of title 38, United States Code; and

''(B) before such appointment, had a license terminated for cause by a State licensing board for hospital care or medical services provided in a facility that is not a facility of the Veterans Health Administration.

''(2) HOSPITAL CARE OR MEDICAL SERVICES.—The terms 'hospital care' and 'medical services' have the meanings given those terms in section 1701 of title 38, United States Code.''

MODIFICATION OF RESOURCE ALLOCATION SYSTEM TO INCLUDE PEER SPECIALISTS

Pub. L. 117–328, div. U, title I, §192, Dec. 29, 2022, 136 Stat. 5439, provided that:

''(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 29, 2022], the Secretary of Veterans Affairs shall modify the Veterans Equitable Resource Allocation system, or successor system, to ensure that resource allocations under such system, or successor system, include peer specialists appointed under section 7402(b)(13) of title 38, United States Code.

''(b) VETERANS EQUITABLE RESOURCE ALLOCATION SYSTEM DEFINED.—In this section, the term 'Veterans Equitable Resource Allocation system' means the resource allocation system established pursuant to section 429 of the Departments of Veterans Affairs and House and Urban Development, and Independent Agencies Appropriations Act, 1997 [probably means section 429 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, which is not classified to the Code] (Public Law 104–204; 110 Stat. 2929).''

EXPANSION OF MENTAL HEALTH TRAINING FOR DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 117–328, div. V, title I, §103, Dec. 29, 2022, 136 Stat. 5500, provided that:

''(a) IN GENERAL.—Not later than three years after the date of the enactment of this Act [Dec. 29, 2022] and subject to the availability of appropriations, the Secretary of Veterans Affairs, in collaboration with the Office of Mental Health and Suicide Prevention and the Office of Academic Affiliations, shall add an additional 250 paid trainee slots in covered mental health disciplines to the workforce of the Department of Veterans Affairs.

''(b) COVERED MENTAL HEALTH DISCIPLINES DEFINED.—In this section, the term 'covered mental health disciplines' means psychiatry, psychology, advanced practice nursing (with a focus on mental health or substance use disorder), social work, licensed professional mental health counseling, and marriage and family therapy.''

OUTREACH

Pub. L. 117–328, div. V, title I, §104(c), Dec. 29, 2022, 136 Stat. 5501, provided that:

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 29, 2022], the Secretary shall develop a public awareness campaign to encourage veterans and mental health professionals to choose the Department for their mental health career.

''(2) ELEMENTS.—The campaign required under paragraph (1)—

''(A) shall advertise the paid trainee, scholarship, and loan repayment opportunities offered by the Department; and

''(B) may highlight the new graduate medical education residencies available at the Department for medical students entering residency.''

NATIONAL RURAL RECRUITMENT AND HIRING PLAN FOR VETERANS HEALTH ADMINISTRATION

Pub. L. 117–168, title IX, §901, Aug. 10, 2022, 136 Stat. 1808, provided that:

''(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Aug. 10, 2022], the Secretary of Veterans Affairs, in collaboration with the directors of each community-based outpatient clinic and medical center of the Department of Veterans Affairs, shall develop and implement a national rural recruitment and hiring plan for the Veterans Health Administration to—

''(1) recruit health care professionals for rural and highly rural community-based outpatient clinics and rural and highly rural medical centers of the Department;

''(2) determine which such clinics or centers have a staffing shortage of health care professionals;

''(3) develop best practices and techniques for recruiting health care professionals for such clinics and centers;

''(4) not less frequently than annually, provide virtually based, on-demand training to human resources professionals of the Veterans Health Administration on the best practices and techniques developed under paragraph (3); and

''(5) provide recruitment resources, such as pamphlets and marketing material to—

''(A) Veterans Integrated Service Networks of the Department;

''(B) rural and highly rural community-based outpatient clinics of the Department; and

''(C) rural and highly rural medical centers of the Department.

''(b) ANNUAL REPORT.—Not later than 18 months after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report that includes—

''(1) the plan developed and implemented under subsection (a); and

''(2) an assessment of the outcomes related to recruitment and retention of employees of the Veterans Health Administration at rural and highly rural facilities of the Department.

''(c) DEFINITIONS.—In this section, the terms 'rural' and 'highly rural' have the meanings given those terms under the rural-urban commuting areas coding system of the Department of Agriculture.''

AUTHORITY TO BUY OUT SERVICE CONTRACTS FOR CERTAIN HEALTH CARE PROFESSIONALS IN EXCHANGE FOR EMPLOYMENT AT RURAL OR HIGHLY RURAL FACILITIES OF DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 117–168, title IX, §902, Aug. 10, 2022, 136 Stat. 1808, provided that:

''(a) IN GENERAL.—For any covered health care professional to whom the Secretary of Veterans Affairs has offered employment with the Department of Veterans Affairs, the Secretary may buy out the non-Department service contract of such individual in exchange for such individual agreeing to be employed at a rural or highly rural facility of the Department for a period of obligated service specified in subsection (c).

''(b) PAYMENT OF AMOUNTS.—

''(1) IN GENERAL.—Payment of any amounts for a buy out of a service contract for a covered health

care professional under subsection (a) shall be made directly to the individual or entity with respect to which the covered health care professional has a service obligation under such contract.

''(2) LIMITATION ON TOTAL AMOUNT.—The total amount paid by the Department under this section shall not exceed $40,000,000 per fiscal year.

''(c) OBLIGATED SERVICE.—In exchange for a contract buy out under subsection (a), a covered health care professional shall agree to be employed for not less than four years at a rural or highly rural facility of the Department.

''(d) LIABILITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if a covered health care professional fails for any reason to complete the period of obligated service of the individual under subsection (c), the United States shall be entitled to recover from the individual an amount equal to—

''(A) the total amount paid under subsection (a) to buy out the non-Department service contract of the individual; multiplied by

''(B) a fraction—

''(i) the numerator of which is—

''(I) the total number of months in the period of obligated service of the individual; minus

''(II) the number of months served by the individual; and

''(ii) the denominator of which is the total number of months in the period of obligated service of the individual.

''(2) EXCEPTION.—Liability shall not arise under paragraph (1) in the case of an individual covered by that paragraph if the individual does not obtain, or fails to maintain, employment as an employee of the Department due to staffing changes approved by the Under Secretary for Health.

''(e) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Aug. 10, 2022], and not less frequently than annually thereafter, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the use by the Secretary of the authority under this section.

''(2) ELEMENTS.—Each report required by paragraph (1) shall include the following:

''(A) The number of health care professionals for whom a service contract buyout payment was made under subsection (a) in the previous fiscal year, disaggregated by occupation or specialty.

''(B) The average, highest, and lowest amount of the service contract buyout payments made under subsection (a) for each occupation or specialty in the previous fiscal year.

''(C) Each location where contract buyout authority under subsection (a) was utilized and the number of covered health care professionals who agreed to be employed at such location in the previous fiscal year.

''(f) DEFINITIONS.—In this section:

''(1) COVERED HEALTH CARE PROFESSIONAL.—The term 'covered health care professional' means a physician, nurse anesthetist, physician assistant, or nurse practitioner offered employment with the Department regardless of the authority under which such employment is offered.

''(2) RURAL; HIGHLY RURAL.—The terms 'rural' and 'highly rural' have the meanings given those terms under the rural-urban commuting areas coding system of the Department of Agriculture.

''(g) SUNSET.—This section shall terminate on September 30, 2027.''

QUALIFICATIONS FOR HUMAN RESOURCES POSITIONS WITHIN DEPARTMENT OF VETERANS AFFAIRS AND PLAN TO RECRUIT AND RETAIN HUMAN RESOURCES EMPLOYEES

Pub. L. 117–168, title IX, § 903, Aug. 10, 2022, 136 Stat. 1810, provided that:

''(a) ESTABLISHMENT OF QUALIFICATIONS.—Not later than 180 days after the date of the enactment of this Act [Aug. 10, 2022], the Secretary of Veterans Affairs shall—

''(1) establish qualifications for each human resources position within the Department of Veterans Affairs in coordination with the Office of Personnel Management;

''(2) establish standardized performance metrics for each such position; and

''(3) submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report containing the qualifications and standardized performance metrics established under paragraphs (1) and (2).

''(b) IMPROVEMENT OF HUMAN RESOURCES ACTIONS.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall establish or enhance systems of the Department to monitor the hiring and other human resources actions that occur at the local, regional, and national levels of the Department to improve the performance of those actions.

''(c) REPORT.—Not later than one year after the establishment of the qualifications and performance metrics under subsection (a), the Comptroller General of the United States shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report containing—

''(1) a description of the implementation of such qualifications and performance metrics;

''(2) an assessment of the quality of such qualifications and performance metrics;

''(3) an assessment of performance and outcomes based on such metrics; and

''(4) such other matters as the Comptroller General considers appropriate.

''(d) PLAN TO RECRUIT AND RETAIN HUMAN RESOURCES EMPLOYEES.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a plan for the recruitment and retention of human resources employees within the Department of Veterans Affairs.''

EMERGENCY DEPARTMENT OF VETERANS AFFAIRS EMPLOYEE LEAVE FUND

Pub. L. 117–2, title VIII, § 8008, Mar. 11, 2021, 135 Stat. 116, provided that:

''(a) ESTABLISHMENT; APPROPRIATION.—There is established in the Treasury the Emergency Department of Veterans Affairs Employee Leave Fund (in this section referred to as the 'Fund'), to be administered by the Secretary of Veterans Affairs, for the purposes set forth in subsection (b). In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $80,000,000, which shall be deposited into the Fund and remain available through September 20, 2022.

''(b) PURPOSE.—Amounts in the Fund shall be available for payment to the Department of Veterans Affairs for the use of paid leave by any covered employee who is unable to work because the employee—

''(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID–19;

''(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

''(3) is caring for an individual who is subject to such an order or has been so advised;

''(4) is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

''(5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or

daughter is unavailable, due to COVID–19 precautions;

''(6) is experiencing any other substantially similar condition;

''(7) is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID–19; or

''(8) is obtaining immunization related to COVID–19 or to recover from any injury, disability, illness, or condition related to such immunization.

''(c) LIMITATIONS.—

''(1) PERIOD OF AVAILABILITY.—Paid leave under this section may only be provided to and used by a covered employee during the period beginning on the date of enactment of this Act [Mar. 11, 2021] and ending on September 30, 2021.

''(2) TOTAL HOURS; AMOUNT.—Paid leave under this section—

''(A) shall be provided to a covered employee in an amount not to exceed 600 hours of paid leave for each full-time employee, and in the case of a part-time employee, employee on an uncommon tour of duty, or employee with a seasonal work schedule, in an amount not to exceed the proportional equivalent of 600 hours to the extent amounts in the Fund remain available for reimbursement;

''(B) shall be paid at the same hourly rate as other leave payments; and

''(C) may not be provided to a covered employee if the leave would result in payments greater than $2,800 in aggregate for any biweekly pay period for a full-time employee, or a proportionally equivalent biweekly limit for a part-time employee.

''(3) RELATIONSHIP TO OTHER LEAVE.—Paid leave under this section—

''(A) is in addition to any other leave provided to a covered employee; and

''(B) may not be used by a covered employee concurrently with any other paid leave.

''(4) CALCULATION OF RETIREMENT BENEFIT.—Any paid leave provided to a covered employee under this section shall reduce the total service used to calculate any Federal civilian retirement benefit.

''(d) COVERED EMPLOYEE DEFINED.—In this section, the term 'covered employee' means an employee of the Department of Veterans Affairs appointed under chapter 74 of title 38, United States Code.''

DEPARTMENT OF VETERANS AFFAIRS PILOT PROGRAM FOR CLINICAL OBSERVATION BY UNDERGRADUATE STUDENTS

Pub. L. 116–315, title III, §3010, Jan. 5, 2021, 134 Stat. 4997, provided that:

''(a) ESTABLISHMENT.—The Secretary of Veterans Affairs shall carry out a pilot program for a one-year period, beginning not later than August 15, 2021, to provide certain students described in subsection (d) a clinical observation experience at medical centers of the Department of Veterans Affairs.

''(b) MEDICAL CENTER SELECTION.—The Secretary shall carry out the pilot program under this section at not fewer than five medical centers of the Department. In selecting such medical centers, the Secretary shall ensure regional diversity among such selected medical centers.

''(c) CLINICAL OBSERVATION SESSIONS.—

''(1) FREQUENCY AND DURATION.—In carrying out the pilot program, the Secretary shall—

''(A) provide at least one and not more than three clinical observation sessions at each medical center selected during each calendar year;

''(B) ensure that each clinical observation session—

''(i) lasts between four and six months; and

''(ii) to the extent practicable, begins and ends concurrently with one or more academic terms of an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); and

''(C) ensure that the clinical observation sessions provided at a medical center have minimal overlap.

''(2) SESSIONS.—The Secretary shall ensure that the pilot program consists of clinical observation sessions as follows:

''(A) Each session shall allow for not fewer than five students nor greater than 15 students to participate in the session.

''(B) Each session shall consist of not fewer than 20 observational hours nor greater than 40 observational hours.

''(C) A majority of the observational hours shall be spent observing a health professional. The other observational hours shall be spent in a manner that ensures a robust, well rounded experience that exposes the students to a variety of aspects of medical care and health care administration.

''(D) Each session shall provide a diverse clinical observation experience.

''(d) STUDENTS.—

''(1) SELECTION.—The Secretary shall select to participate in the pilot program under subsection (a) students who are—

''(A) nationals of the United States;

''(B) enrolled in an accredited program of study at an institution of higher education; and

''(C) referred by their institution of higher education following an internal application process.

''(2) PRIORITY.—In making such selection, the Secretary shall give priority to each of the following five categories of students:

''(A) Students who, at the time of the completion of their secondary education, resided in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

''(B) First generation college students (as defined in section 402A(h)(3) of the Higher Education Act of 1965 (20 U.S.C. 1067q(a))).

''(C) Students who have been referred by minority-serving institutions (as defined in section 371(a) of the Higher Education Act of 1965 (20 U.S.C. 1067q(a))).

''(D) Veterans (as defined in section 101 of title 38, United States Code).

''(E) Students who indicate an intention to specialize in a health professional occupation identified by the Inspector General of the Department under section 7412 of title 38, United States Code, as having a staffing shortage.

''(3) ASSIGNMENT TO MEDICAL CENTERS.—The Secretary shall assign students selected under paragraph (1) to medical centers selected under subsection (b) without regard for whether such medical centers have staffing shortages in any health professional occupation pursuant to section 7412 of title 38, United States Code.

''(e) OTHER MATTERS.—In carrying out the pilot program under this section, the Secretary shall—

''(1) establish a formal status to facilitate the access to medical centers of the Department by student observers participating in the pilot program;

''(2) establish standardized legal, privacy, and ethical requirements for the student observers, including with respect to—

''(A) ensuring that no student observer provides any care to patients while participating as an observer; and

''(B) ensuring the suitability of a student to participate in the pilot program to ensure that the student poses no risk to patients;

''(3) develop and implement a partnership strategy with minority-serving institutions to encourage referrals;

''(4) create standardized procedures for student observers;

''(5) create an online information page about the pilot program on the internet website of the Department;

''(6) publish on the online information page created under paragraph (5) the locations of such centers, and other information on the pilot program, not later than 180 days before the date on which applications are required to be submitted by potential student observers;

''(7) identify medical centers and specific health professionals participating in the pilot program; and

''(8) notify the Committees on Veterans' Affairs of the House of Representatives and the Senate of the medical centers selected under subsection (c) within 30 days of selection, to facilitate program awareness.

''(f) REPORT.—Not later than 180 days after the completion of the pilot program under subsection (a), the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report on the results of the pilot program, including—

''(1) the number and demographics of all applicants, those accepted to participate in the pilot program, and those who completed the pilot program; and

''(2) if participating institutions of higher education choose to administer satisfaction surveys that assess the experience of those who completed the pilot program, the results of any such satisfaction surveys, provided at the discretion of the institution of higher education.

''(g) SENSE OF CONGRESS REGARDING DEPARTMENT OF VETERANS AFFAIRS PILOT PROGRAM FOR CLINICAL OBSERVATION BY UNDERGRADUATE STUDENTS.—It is the sense of Congress that the pilot program described in subsection (a) should be designed to—

''(1) increase the awareness, knowledge, and empathy of future health professionals toward the health conditions common to veterans;

''(2) increase the diversity of the recruitment pool of future physicians of the Department; and

''(3) expand clinical observation opportunities for all students by encouraging students of all backgrounds to consider a career in the health professions.

''(h) NO ADDITIONAL FUNDS AUTHORIZED.—No additional funds are authorized to be appropriated to carry out the requirements of this section. Such requirements shall be carried out using amounts otherwise authorized to be appropriated.''

OCCUPATIONAL SERIES FOR CERTAIN MENTAL HEALTH PROVIDERS

Pub. L. 116–171, title V, § 501(b), Oct. 17, 2020, 134 Stat. 815, provided that: ''Not later than one year after the date of the enactment of this Act [Oct. 17, 2020], the Secretary of Veterans Affairs, in consultation with the Office of Personnel Management, shall develop an occupational series for licensed professional mental health counselors and marriage and family therapists of the Department of Veterans Affairs.''

IDENTIFICATION AND REFERRAL OF MEMBERS OF THE ARMED FORCES WITH A HEALTH CARE OCCUPATION FOR POTENTIAL EMPLOYMENT WITH THE DEPARTMENT OF VETERANS AFFAIRS DURING SEPARATION FROM THE ARMED FORCES

Pub. L. 115–46, title II, § 207, Aug. 12, 2017, 131 Stat. 964, as amended by Pub. L. 117–67, § 2, Nov. 30, 2021, 135 Stat. 1491, provided that:

''(a) IN GENERAL.—The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall establish a program to identify and refer members of the Armed Forces with a health care occupation for employment with the Department of Veterans Affairs during the separation of such members from the Armed Forces.

''(b) REFERRAL OF INTERESTED INDIVIDUALS.—

''(1) IN GENERAL.—If a member of the Armed Forces identified under subsection (a) expresses an interest in working in a health care occupation within the Department of Veterans Affairs, the Secretary of Veterans Affairs shall refer the member to a recruiter of the Department for consideration of open positions in the specialty and geography of interest to the member.

''(2) TIMING.—Any referral of a member of the Armed Forces conducted under paragraph (1) shall be made not earlier than one year before the separation of the member from the Armed Forces.

''(c) RULE OF CONSTRUCTION.—Any identification of a member of the Armed Forces under subsection (a) or referral of such member under subsection (b) shall not be construed as a guarantee of employment of such member with the Department of Veterans Affairs.

''(d) REPORTS.—Not later than each of one year and two years after the date of the enactment of the Hire Veteran Health Heroes Act of 2021 [Nov. 30, 2021], the Secretary of Veterans Affairs shall submit to the appropriate committees of Congress a report on the program established under subsection (a).

''(e) DEFINITIONS.—In this section:

''(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services and the Committee on Veterans' Affairs of the Senate; and

''(B) the Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives.

''(2) HEALTH CARE OCCUPATION.—The term 'health care occupation' means an occupation for which an individual may be appointed for employment with the Department of Veterans Affairs under section 7401 of title 38, United States Code.''

TRAINING FOR HUMAN RESOURCES PROFESSIONALS OF VETERANS HEALTH ADMINISTRATION ON RECRUITMENT AND RETENTION

Pub. L. 115–46, title II, § 209, Aug. 12, 2017, 131 Stat. 965, provided that:

''(a) IN GENERAL.—The Secretary of Veterans Affairs shall provide to human resources professionals of the Veterans Health Administration training on how to best recruit and retain employees of the Veterans Health Administration, including with respect to any recruitment and retention matters that are unique to the Veterans Health Administration pursuant to chapter 74 of title 38, United States Code, or other provisions of law.

''(b) VIRTUAL TRAINING.—Training provided under this section shall be provided virtually.

''(c) AMOUNT OF TRAINING.—The Secretary shall ensure that each human resources professional of the Veterans Health Administration receives the training described in subsection (a)—

''(1) as soon as practicable after being hired by the Secretary as a human resources professional; and

''(2) annually thereafter.

''(d) CERTIFICATION.—The Secretary shall require that each human resources professional of the Veterans Health Administration, upon the completion of the training described in subsection (a), certifies that the professional received the training and understands the information provided by the training.

''(e) ANNUAL REPORT.—Not less frequently than annually, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the training described in subsection (a), including the cost of providing such training and the number of human resources professionals who received such training during the year covered by the report.''

PLAN TO HIRE DIRECTORS OF MEDICAL CENTERS OF DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 115–46, title II, § 210, Aug. 12, 2017, 131 Stat. 965, provided that:

''(a) PLAN.—Not later than 120 days after the date of the enactment of this Act [Aug. 12, 2017], the Secretary of Veterans Affairs shall develop and implement a plan to hire highly qualified directors for each medical center of the Department of Veterans Affairs that lacks a permanent director as of the date of the plan.

''(b) PRIORITY.—The Secretary shall prioritize under the plan developed under subsection (a) the hiring of directors for medical centers that have not had a permanent director for the longest periods.

''(c) MATTERS INCLUDED.—The plan developed under subsection (a) shall include the following:

''(1) A deadline to hire directors of medical centers of the Department as described in such subsection.

''(2) Identification of the possible impediments to such hiring.

''(3) Identification of opportunities to promote and train candidates from within the Department to senior executive positions in the Department, including as directors of medical centers.

''(d) SUBMITTAL OF PLAN.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives the plan developed under subsection (a).

''(e) SEMIANNUAL REPORTS.—Not later than 180 days after the date of the enactment of this Act, and not later than 180 days thereafter, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report containing a list of each medical center of the Department that lacks a permanent director as of the date of the report.''

LICENSED HEARING AID SPECIALISTS APPOINTMENT AND SERVICES

Pub. L. 114–256, §4(b), (c), Dec. 14, 2016, 130 Stat. 1347, 1348, provided that:

''(b) REQUIREMENTS.—With respect to appointing hearing aid specialists under sections 7401 and 7402 of title 38, United States Code, as amended by subsection (a), and providing services furnished by such specialists, the Secretary [of Veterans Affairs] shall ensure that—

''(1) a hearing aid specialist may only perform hearing services consistent with the hearing aid specialist's State license related to the practice of fitting and dispensing hearing aids without excluding other qualified professionals, including audiologists, from rendering services in overlapping practice areas;

''(2) services provided to veterans by hearing aid specialists shall be provided as part of the non-medical treatment plan developed by an audiologist; and

''(3) the medical facilities of the Department of Veterans Affairs provide to veterans access to the full range of professional services provided by an audiologist.

''(c) CONSULTATION.—In determining the qualifications required for hearing aid specialists and in carrying out subsection (b), the Secretary shall consult with veterans service organizations, audiologists, otolaryngologists, hearing aid specialists, and other stakeholder and industry groups as the Secretary determines appropriate.''

PRIOR APPOINTMENTS OF CERTAIN PERSONNEL

Pub. L. 108–170, title III, §301(a)(2), Dec. 6, 2003, 117 Stat. 2055, provided that: ''Personnel appointed to the Veterans Health Administration before the date of the enactment of this Act [Dec. 6, 2003] who are in an occupational category of employees specified in paragraph (3) of section 7401 of title 38, United States Code, by reason of the amendment made by paragraph (1)(B) of this subsection [amending this section] shall, as of such date, be deemed to have been appointed to the Administration under such paragraph (3).''

### § 7402. Qualifications of appointees

(a) To be eligible for appointment to the positions in the Administration covered by subsection (b), a person must have the applicable qualifications set forth in that subsection.

(b)(1) PHYSICIAN.—To be eligible to be appointed to a physician position, a person must—

(A) hold the degree of doctor of medicine or of doctor of osteopathy from a college or university approved by the Secretary,

(B) have completed an internship satisfactory to the Secretary, and

(C) be licensed to practice medicine, surgery, or osteopathy in a State.

(2) DENTIST.—To be eligible to be appointed to a dentist position, a person must—

(A) hold the degree of doctor of dental surgery or dental medicine from a college or university approved by the Secretary, and

(B) be licensed to practice dentistry in a State.

(3) NURSE.—To be eligible to be appointed to a nurse position, a person must—

(A) have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, and

(B) be registered as a graduate nurse in a State.

(4) DIRECTOR OF A HOSPITAL, DOMICILIARY, CENTER, OR OUTPATIENT CLINIC.—To be eligible to be appointed to a director position, a person must have such business and administrative experience and qualifications as the Secretary shall prescribe.

(5) PODIATRIST.—To be eligible to be appointed to a podiatrist position, a person must—

(A) hold the degree of doctor of podiatric medicine, or its equivalent, from a school of podiatric medicine approved by the Secretary, and

(B) be licensed to practice podiatry in a State.

(6) OPTOMETRIST.—To be eligible to be appointed to an optometrist position, a person must—

(A) hold the degree of doctor of optometry, or its equivalent, from a school of optometry approved by the Secretary, and

(B) be licensed to practice optometry in a State.

(7) PHARMACIST.—To be eligible to be appointed to a pharmacist position, a person must—

(A) hold the degree of bachelor of science in pharmacy, or its equivalent, from a school of pharmacy, approved by the Secretary, and

(B) be registered as a pharmacist in a State.

(8) PSYCHOLOGIST.—To be eligible to be appointed to a psychologist position, a person must—

(A) hold a doctoral degree in psychology from a college or university approved by the Secretary,

(B) have completed study for such degree in a specialty area of psychology and an internship which are satisfactory to the Secretary, and

(C) be licensed or certified as a psychologist in a State, except that the Secretary may waive the requirement of licensure or certification for an individual psychologist for a period not to exceed two years on the condition that that psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified.

(9) SOCIAL WORKER.—To be eligible to be appointed to a social worker position, a person must—

(A) hold a master's degree in social work from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice social work in a State, except that the Secretary may waive the requirement of licensure or certification for an individual social worker for a reasonable period of time recommended by the Under Secretary for Health.

(10) MARRIAGE AND FAMILY THERAPIST.—To be eligible to be appointed to a marriage and family therapist position, a person must—

(A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.

(11) LICENSED PROFESSIONAL MENTAL HEALTH COUNSELOR.—To be eligible to be appointed to a licensed professional mental health counselor position, a person must—

(A) hold a master's degree or doctoral degree in mental health counseling, or a related field, from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice mental health counseling.

(12) CHIROPRACTOR.—To be eligible to be appointed to a chiropractor position, a person must—

(A) hold the degree of doctor of chiropractic, or its equivalent, from a college of chiropractic approved by the Secretary; and

(B) be licensed to practice chiropractic in a State.

(13) Peer Specialist.—To be eligible to be appointed to a peer specialist position, a person must—

(A) be a veteran who has recovered or is recovering from a mental health condition; and

(B) be certified by—

(i) a not-for-profit entity engaged in peer specialist training as having met such criteria as the Secretary shall establish for a peer specialist position; or

(ii) a State as having satisfied relevant State requirements for a peer specialist position.

(14) OTHER HEALTH-CARE POSITIONS.—To be appointed as a physician assistant, expanded-function dental auxiliary, certified or registered respiratory therapist, licensed physical therapist, licensed practical or vocational nurse, occupational therapist, dietitian, microbiologist, chemist, biostatistician, medical technologist, dental technologist, hearing aid specialist, or other position, a person must have such medical, dental, scientific, or technical qualifications as the Secretary shall prescribe.

(c) Except as provided in section 7407(a) of this title, a person may not be appointed in the Administration to a position listed in section 7401(1) of this title unless the person is a citizen of the United States.

(d) A person may not be appointed under section 7401(1) of this title to serve in the Administration in any direct patient-care capacity unless the Under Secretary for Health determines that the 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 the person to carry out the person's health-care responsibilities satisfactorily. Any determination by the Under Secretary for Health under this subsection shall be in accordance with regulations which the Secretary shall prescribe.

(e) A person may not serve as Chief of Staff of a Department health-care facility if the person is not serving on a full-time basis.

(f) A person may not be employed in a position under subsection (b) (other than under paragraph (4) of that subsection) if—

(1) the person is or has been licensed, registered, or certified (as applicable to such position) in more than one State; and

(2) either—

(A) any of those States has terminated such license, registration, or certification for cause; or

(B) the person has voluntarily relinquished such license, registration, or certification in any of those States after being notified in writing by that State of potential termination for cause.

(g) The Secretary may enter into contracts with not-for-profit entities to provide—

(1) peer specialist training to veterans; and

(2) certification for veterans under subsection (b)(13)(B)(i).

(Added Pub. L. 102–40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 222; amended Pub. L. 102–86, title III, § 305(a), Aug. 14, 1991, 105 Stat. 417; Pub. L. 102–405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106–117, title II, § 209, Nov. 30, 1999, 113 Stat. 1569; Pub. L. 106–419, title II, § 205, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108–170, title III, § 302(b), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 109–461, title II, § 201(b), Dec. 22, 2006, 120 Stat. 3409; Pub. L. 110–387, title IV, § 405, Oct. 10, 2008, 122 Stat. 4129; Pub. L. 114–256, § 4(a)(2), Dec. 14, 2016, 130 Stat. 1347; Pub. L. 114–315, title VI, § 613, Dec. 16, 2016, 130 Stat. 1576.)

**Editorial Notes**

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4105 and 4108(b) 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

2016—Subsec. (b)(11)(A). Pub. L. 114–315 inserted ''or doctoral degree'' after ''master's degree''.

Subsec. (b)(14). Pub. L. 114–256 inserted '', hearing aid specialist'' after ''dental technologist''.

2008—Subsec. (b)(11). Pub. L. 110–387, § 405(a)(1), redesignated par. (11) relating to other health care positions as (14).

Subsec. (b)(13). Pub. L. 110–387, § 405(a)(2), added par. (13).

Subsec. (b)(14). Pub. L. 110–387, § 405(a)(1), redesignated par. (11) relating to other health care positions as (14).

Subsec. (g). Pub. L. 110–387, § 405(b), added subsec. (g).

2006—Subsec. (b)(10) to (12). Pub. L. 109–461 added par. (10) and the par. (11) relating to licensed professional health counselor and redesignated former par. (10) as (12).

2003—Subsec. (b)(10), (11). Pub. L. 108–170 added par. (10) and redesignated former par. (10) as (11).

2000—Subsec. (b)(9). Pub. L. 106–419 substituted ''a person must—'' and subpars. (A) and (B) for ''a person must hold a master's degree in social work from a college or university approved by the Secretary and satisfy the social worker licensure, certification, or registration requirements, if any, of the State in which the social worker is to be employed, except that the Secretary may waive the licensure, certification, or registration requirement of this paragraph for an individual social worker for a reasonable period, not to exceed 3 years, in order for the social worker to take any actions necessary to satisfy the licensure, certification, or registration requirements of such State.''

1999—Subsec. (f). Pub. L. 106–117 added subsec. (f).

1992—Subsec. (d). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director'' in two places.

1991—Subsec. (b)(9), (10). Pub. L. 102–86 added par. (9) and redesignated former par. (9) as (10).

**Statutory Notes and Related Subsidiaries**

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 1991 AMENDMENT

Pub. L. 102–86, title III, § 305(b), Aug. 14, 1991, 105 Stat. 417, provided that: ''The amendment made by subsection (a) [amending this section] does not apply to any person employed as a social worker by the Department of Veterans Affairs on or before the date of the enactment of this Act [Aug. 14, 1991].''

PRESCRIPTION OF TECHNICAL QUALIFICATIONS FOR LICENSED HEARING AID SPECIALISTS AND REQUIREMENT FOR APPOINTMENT OF SUCH SPECIALISTS

Pub. L. 116–171, title VII, § 703, Oct. 17, 2020, 134 Stat. 829, provided that:

''(a) TECHNICAL QUALIFICATIONS.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2020], the Secretary of Veterans Affairs shall prescribe the technical qualifications required under section 7402(b)(14) of title 38, United States Code, to be appointed as a licensed hearing aid specialist under section 7401(3) of such title.

''(2) ELEMENTS FOR QUALIFICATIONS.—In prescribing the qualifications for licensed hearing aid specialists under paragraph (1), the Secretary shall, at a minimum, ensure that such qualifications are consistent with—

''(A) the standards for licensure of hearing aid specialists that are required by a majority of States;

''(B) any competencies needed to perform tasks and services commonly performed by hearing aid specialists pursuant to such standards; and

''(C) any competencies needed to perform tasks specific to providing care to individuals under the laws administered by the Secretary.

''(b) AUTHORITY TO SET AND MAINTAIN DUTIES.—The Secretary shall retain the authority to set and maintain the duties for licensed hearing aid specialists appointed under section 7401(3) of title 38, United States Code, for the purposes of the employment of such specialists with the Department of Veterans Affairs.

''(c) APPOINTMENT.—Not later than September 30, 2022, the Secretary shall appoint not fewer than one licensed hearing aid specialist at each medical center of the Department.

''(d) REPORT.—Not later than September 30, 2022, and annually thereafter, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report—

''(1) assessing the progress of the Secretary in appointing licensed hearing aid specialists under subsection (c);

''(2) assessing potential conflicts or obstacles that prevent the appointment of licensed hearing aid specialists;

''(3) assessing the factors that led to such conflicts or obstacles;

''(4) assessing access of patients to comprehensive hearing health care services from the Department consistent with the requirements under section 4(b) of the Veterans Mobility Safety Act of 2016 (Public Law 114–256; 38 U.S.C. 7401 note), including an assessment of the impact of infrastructure and equipment limitations on wait times for audiologic care; and

''(5) indicating the medical centers of the Department with vacancies for audiologists or licensed hearing aid specialists.''

REQUIREMENTS RESPECTING BASIC PROFICIENCY IN SPOKEN AND WRITTEN ENGLISH OF APPOINTEES AFTER NOVEMBER 23, 1977

Pub. L. 95–201, § 4(a)(3), Nov. 23, 1977, 91 Stat. 1430, provided that: ''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 [former sections 4105(c) and 4114(f) of this title, see subsec. (d) of this section and section 7407(d) of this title] (as added by paragraphs (1) and (2) of this subsection), who are appointed after the date of enactment of this Act [Nov. 23, 1977] in the Department of Medicine and Surgery in the Veterans' Administration [now Veterans Health Administration of the Department of Veterans Affairs] 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 [now Secretary of Veterans Affairs], upon the recommendation of the Chief Medical Director [now Under Secretary for Health], 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.''

## § 7403. Period of appointments; promotions

(a)(1) Appointments under this chapter of health-care professionals to whom this section applies may be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Secretary, without regard to civil-service requirements.

(2) This section applies to the following persons appointed under this chapter:

(A) Physicians.

(B) Dentists.

(C) Podiatrists.

(D) Optometrists.

(E) Nurses.

(F) Physician assistants.

(G) Expanded-function dental auxiliaries.

(H) Chiropractors.

(b)(1) Except as otherwise provided in this subsection, appointments described in subsection (a) shall be for a probationary period of two years.

(2) With respect to the appointment of a registered nurse under this chapter, paragraph (1) shall apply with respect to such appointment regardless of whether such appointment is on a full-time basis or a part-time basis.

(3) An appointment described in subsection (a) on a part-time basis of a person who has previously served on a full-time basis for the probationary period for the position concerned shall be without a probationary period.

(4) The record of each person serving under such an appointment in the Medical, Dental, and Nursing Services shall be reviewed from time to time by a board, appointed in accordance with regulations of the Secretary. If such a board finds that such person is not fully qualified and satisfactory, such person shall be separated from the service.

(c) Promotions of persons to whom this section applies shall be made only after examination given in accordance with regulations prescribed by the Secretary. Advancement within grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Secretary.

(d) In determining eligibility for reinstatement in the Federal civil service of persons appointed to positions in the Administration under this chapter who at the time of appointment have a civil-service status, and whose employment in the Administration is terminated, the period of service performed in the Administration shall be included in computing the period of service under applicable civil-service rules and regulations.

(e) In accordance with regulations prescribed by the Secretary, the grade and annual rate of basic pay of a person to whom this section applies whose level of assignment is changed from a level of assignment in which the grade level is based on both the nature of the assignment and personal qualifications may be adjusted to the grade and annual rate of basic pay otherwise appropriate.

(f)(1) Upon the recommendation of the Under Secretary for Health, the Secretary may—

(A) use the authority in subsection (a) to establish the qualifications for and (subject to paragraph (2)) to appoint individuals to positions listed in section 7401(3) of this title; and

(B) use the authority provided in subsection (c) for the promotion and advancement of Department employees serving in such positions.

(2) In using such authority to appoint individuals to such positions, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(3) Notwithstanding any other provision of this title or other law, all matters relating to adverse actions, reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees, disciplinary actions, and grievance procedures involving individuals appointed to such positions, whether appointed under this section or section 7405(a)(1)(B) of this title (including similar actions and procedures involving an employee in a probationary status), shall be resolved under the provisions of title 5 as though such individuals had been appointed under that title.

(g)(1) The Secretary may appoint in the competitive civil service without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title) an individual who—

(A) has a recognized degree or certificate from an accredited institution in a health-care profession or occupation; and

(B) has successfully completed a clinical education program affiliated with the Department.

(2) In using the authority provided by this subsection, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(h)(1) If the Secretary uses the authority provided in subsection (c) for the promotion and advancement of an occupational category of employees described in section 7401(3) of this title, as authorized by subsection (f)(1)(B), the Secretary shall do so through one or more systems prescribed by the Secretary. Each such system shall be planned, developed, and implemented in collaboration with, and with the participation of, exclusive employee representatives of such occupational category of employees.

(2)(A) Before prescribing a system of promotion and advancement of an occupational category of employees under paragraph (1), the Secretary shall provide to exclusive employee representatives of such occupational category of employees a written description of the proposed system.

(B) Not later than 30 days after receipt of the description of a proposed system under subparagraph (A), exclusive employee representatives may submit to the Secretary the recommendations, if any, of such exclusive employee representatives with respect to the proposed system.

(C) The Secretary shall give full and fair consideration to any recommendations received under subparagraph (B) in deciding whether and how to proceed with a proposed system.

(3) The Secretary shall implement immediately any part of a system of promotion and advancement under paragraph (1) that is proposed under paragraph (2) for which the Secretary receives no recommendations from exclusive employee representatives under paragraph (2).

(4) If the Secretary receives recommendations under paragraph (2) from exclusive employee representatives on any part of a proposed system of promotion and advancement under that paragraph, the Secretary shall determine whether or not to accept the recommendations, either in whole or in part. If the Secretary determines not to accept all or part of the recommendations, the Secretary shall—

(A) notify the congressional veterans' affairs committees of the recommendations and of the portion of the recommendations that the Secretary has determined not to accept;

(B) meet and confer with such exclusive employee representatives, for a period not less than 30 days, for purposes of attempting to reach an agreement on whether and how to proceed with the portion of the recommendations that the Secretary has determined not to accept;

(C) at the election of the Secretary, or of a majority of such exclusive employee representatives who are participating in negotiations on such matter, employ the services of the Federal Mediation and Conciliation Service during the period referred to in subparagraph (B) for purposes of reaching such agreement; and

(D) if the Secretary determines that activities under subparagraph (B), (C), or both are unsuccessful at reaching such agreement and determines (in the sole and unreviewable discretion of the Secretary) that further meeting and conferral under subparagraph (B), mediation under subparagraph (C), or both are unlikely to reach such agreement—

(i) notify the congressional veterans' affairs committees of such determinations, identify for such committees the portions of the recommendations that the Secretary has determined not to accept, and provide such committees an explanation and justification for determining to implement the part of the system subject to such portions of the recommendations without regard to such portions of the recommendations; and

(ii) commencing not earlier than 30 days after notice under clause (i), implement the part of the system subject to the recommendations that the Secretary has determined not to accept without regard to those recommendations.

(5) If the Secretary and exclusive employee representatives reach an agreement under paragraph (4) providing for the resolution of a disagreement on one or more portions of the recommendations that the Secretary had determined not to accept under that paragraph, the Secretary shall immediately implement such resolution.

(6) In implementing a system of promotion and advancement under this subsection, the Secretary shall—

(A) develop and implement mechanisms to permit exclusive employee representatives to participate in the periodic review and evaluation of the system, including peer review, and in any further planning or development required with respect to the system as a result of such review and evaluation; and

(B) provide exclusive employee representatives appropriate access to information to ensure that the participation of such exclusive employee representative in activities under subparagraph (A) is productive.

(7)(A) The Secretary may from time to time modify a system of promotion and advancement under this subsection.

(B) In modifying a system, the Secretary shall take into account any recommendations made by the exclusive employee representatives concerned.

(C) In modifying a system, the Secretary shall comply with paragraphs (2) through (5) and shall treat any proposal for the modification of a system as a proposal for a system for purposes of such paragraphs.

(D) The Secretary shall promptly submit to the congressional veterans' affairs committees a report on any modification of a system. Each report shall include—

(i) an explanation and justification of the modification; and

(ii) a description of any recommendations of exclusive employee representatives with respect to the modification and a statement whether or not the modification was revised in light of such recommendations.

(8) In the case of employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary may develop procedures for input from representatives under this subsection from any appropriate organization that represents a substantial percentage of such employees or, if none, in such other manner as the Secretary considers appropriate, consistent with the purposes of this subsection.

(9) In this subsection, the term ''congressional veterans' affairs committees'' means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(Added Pub. L. 102–40, title IV, §401(b)(2), May 7, 1991, 105 Stat. 224; amended Pub. L. 102–405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108–170, title III, §§301(b), 302(c), Dec. 6, 2003, 117 Stat. 2055, 2058; Pub. L. 111–163, title VI, §601(b), May 5, 2010, 124 Stat. 1168.)

**Editorial Notes**

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4106 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. (b)(1). Pub. L. 111–163, §601(b)(1), substituted ''Except as otherwise provided in this subsection, appointments'' for ''Appointments''.

Subsec. (b)(2) to (4). Pub. L. 111–163, §601(b)(2), (3), added pars. (2) and (3) and redesignated former par. (2) as (4).

2003—Subsec. (a)(2)(H). Pub. L. 108–170, §302(c), added subpar. (H).

Subsec. (f)(3). Pub. L. 108–170, §301(b)(1), inserted ''reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-time employees,'' after ''adverse actions,'', '', whether appointed under this section or section 7405(a)(1)(B) of this title'' after ''such positions'', and comma after ''status)''.

Subsec. (h). Pub. L. 108–170, §301(b)(2), added subsec. (h).

1992—Subsec. (f)(1). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(c) of 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.

### § 7404. Grades and pay scales

(a)(1)(A) The annual rates or ranges of rates of basic pay for positions provided in section [1] 7306 and 7401(4) of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law.

(B) Section 5377 of title 5 shall apply to a position under section 7306 or 7401(4) of this title as if such position were included in the definition of ''position'' in section 5377(a) of title 5.

(2)(A) The pay of physicians, podiatrists, and dentists serving in positions to which an Executive order applies under paragraph (1) shall be determined under subchapter III of this chapter instead of such Executive order.

(B) The basic pay of registered nurses and physician assistants serving in positions to which an Executive order applies under paragraph (1) may be determined under subchapter IV of this chapter instead of such Executive order. Such positions shall not otherwise be covered by such subchapter, except with respect to bonuses under section 7452 or 7458 or special pay under subsection (g) of such section 7452.

(3)(A) The rate of basic pay for a position to which an Executive order applies under paragraph (1) and is not described by paragraph (2) shall be set in accordance with section 5382 of title 5 as if such position were a Senior Executive Service position (as such term is defined in section 3132(a) of title 5).

(B) A rate of basic pay for a position may not be set under subparagraph (A) in excess of—

(i) in the case the position is not described in clause (ii), the rate of basic pay payable for level III of the Executive Schedule; or

(ii) in the case that the position is covered by a performance appraisal system that meets the certification criteria established by regulation under section 5307(d) of title 5, the rate of basic pay payable for level II of the Executive Schedule.

(C) Notwithstanding the provisions of subsection (d) of section 5307 of title 5, the Secretary may make any certification under that subsection instead of the Office of Personnel Management and without concurrence of the Office of Management and Budget.

(b) The grades for positions provided for in paragraph (1) of section 7401 of this title shall be as follows. The annual ranges of rates of basic pay for those grades shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law:

PHYSICIAN AND SURGEON (MD/DO), PODIATRIST (DPM), AND DENTIST AND ORAL SURGEON (DDS, DMD) SCHEDULE

Physician and surgeon grade.
Podiatrist grade.
Dentist grade.

NURSE SCHEDULE

Nurse V.
Nurse IV.
Nurse III.
Nurse II.
Nurse I.

CLINICAL CHIROPRACTOR AND OPTOMETRIST SCHEDULE

Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

(c)(1) Notwithstanding the provisions of section 7425(a) of this title, a person appointed under section 7306 or 7401(4) of this title or in a covered executive position under section 7401(1) of this title shall be deemed to be a career appointee for the purposes of section 4507 of title 5.

(2) In this subsection, the term ''covered executive position'' means a position 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) and is subject to an agency performance management system.

(d) Except as provided under subsection (e), subchapter III, and section 7457 of this title, and except for individuals appointed under sections 7401(4) and 7306 of this title, 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.

(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid basic pay at a rate determined by the Secretary, not to exceed the maximum rates established under subchapter IV of this chapter.

(Added Pub. L. 102–40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 225; amended Pub. L. 102–405, title II, § 206, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102–585, title III, § 301(a), Nov. 4, 1992, 106 Stat. 4951; Pub. L. 108–170, title III, § 302(d), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 108–445, § 3(a), (f), Dec. 3, 2004, 118 Stat. 2636, 2643; Pub. L. 109–461, title II, § 202, Dec. 22, 2006, 120 Stat. 3410; Pub. L. 111–163, title VI, § 601(d)(1), May 5, 2010, 124 Stat. 1169; Pub. L. 115–41, title II, § 207(b), June 23, 2017, 131 Stat. 877; Pub. L. 115–182, title V, § 502(b)(1), June 6, 2018, 132 Stat. 1475; Pub. L. 116–12, § 1(a), Apr. 8, 2019, 133 Stat. 845; Pub. L. 116–146, § 1(a), July 2, 2020, 134 Stat. 658; Pub. L. 117–96, § 1(b), Mar. 14, 2022, 136 Stat. 34; Pub. L. 117–103, div. S, title I, § 102(b), Mar. 15, 2022, 136 Stat. 822; Pub. L. 117–168, title IX, §§ 904(b), 906(a), Aug. 10, 2022, 136 Stat. 1811.)

#### Editorial Notes

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(3)(B)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

Level II of the Executive Schedule, referred to in subsec. (a)(3)(B)(ii), is set out in section 5313 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 115–182, title V, § 502(b)(1), June 6, 2018, 132 Stat. 1475, which directed amendment of ''section 7404(b) of such title'' without specifying the Code title

[1] So in original. Probably should be ''sections''.

to be amended, was executed to this section, which is section 7404 of Title 38, Veterans' Benefits, to reflect the probable intent of Congress. See 2018 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(a)–(d) 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)(1)(B). Pub. L. 117–168, §904(b), inserted ''7306 or'' before ''7401(4)''.

Subsec. (a)(2). Pub. L. 117–103, §102(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 117–96, §1(b)(1), inserted '', podiatrists,'' after ''physicians''.

Subsec. (b). Pub. L. 117–96, §1(b)(2), substituted ''PODIATRIST (DPM)'' for ''PODIATRIST'' in first heading in table.

Subsec. (c). Pub. L. 117–168, §906(a), designated existing provisions as par. (1), inserted ''or 7401(4)'' after ''section 7306'', substituted ''or in a covered executive position under section 7401(1) of this title'' for ''who is not eligible for pay under subchapter III'' and ''section 4507'' for ''sections 4507 and 5384'', and added par. (2).

Subsec. (e). Pub. L. 117–103, §102(b)(2), inserted ''basic pay'' after ''paid'' and substituted ''rates established under subchapter IV of this chapter'' for ''rate established for the Senior Executive Service under section 5382 of title 5''.

2020—Subsec. (d). Pub. L. 116–146 inserted ''and except for individuals appointed under sections 7401(4) and 7306 of this title,'' after ''section 7457 of this title,''.

2019—Subsec. (b). Pub. L. 116–12 substituted ''PODIATRIST'' for ''PODIATRIC SURGEON (DPM)'' in first heading in table and inserted item relating to Podiatrist grade under that heading.

2018—Subsec. (b). Pub. L. 115–182 substituted ''PHYSICIAN AND SURGEON (MD/DO), PODIATRIC SURGEON (DPM), AND DENTIST AND ORAL SURGEON (DDS, DMD) SCHEDULE'' for ''PHYSICIAN AND DENTIST SCHEDULE'' as first heading in table and ''Physician and surgeon grade'' for ''Physician grade'' as first item under that heading and substituted ''CHIROPRACTOR, AND'' for ''PODIATRIST, CHIROPRACTOR, AND'' in third heading in table. See Codification note above.

2017—Subsec. (a)(1). Pub. L. 115–41 designated existing provisions as subpar. (A), inserted ''and 7401(4)'' after ''section 7306'', and added subpar. (B).

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.

### § 7404A. Awards

(a) SUPERIOR ACCOMPLISHMENTS AND PERFORMANCE AWARDS PROGRAM.—The Secretary may establish an awards program for personnel listed in section 7421(b) of this title consistent with chapter 45 of title 5, to the extent practicable.

(b) EXECUTIVE PERFORMANCE AWARDS PROGRAM.—Notwithstanding section 7425 of this title or any other provision of law, the Secretary may establish a performance awards program consistent with section 5384 of title 5 for—

(1) personnel appointed under section 7401(1) of this title for a position 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) and is subject to an agency performance management system; and

(2) personnel appointed under section 7306 or 7401(4) of this title.

(c) PAYMENT OF AWARDS.—Awards under this section may be paid based on criteria established by the Secretary and shall not be considered in calculating the limitation under section 7431(e)(4) of this title.

(d) NOT CONSIDERED BASIC PAY.—Awards under this section shall not be considered basic pay for any purpose.

(e) REGULATIONS.—The Secretary may prescribe regulations for the administration of this section.

(Added Pub. L. 117–168, title IX, § 906(b)(1), Aug. 10, 2022, 136 Stat. 1812.)

**Statutory Notes and Related Subsidiaries**

LIMITATION ON PAST AWARDS

Pub. L. 117–168, title IX, § 906(b)(2), Aug. 10, 2022, 136 Stat. 1812, provided that: ''Notwithstanding any other provision of law, awards made by the Secretary of Veterans Affairs for any period on or after January 1, 2017, and before the date of the enactment of this Act [Aug. 10, 2022] for an employee under section 7306 or 7401(4) of title 38, United States Code, or for a position described in section 7401(1) of such 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, United States Code), may be subject to section 7404A of title 38, United States Code, as added by paragraph (1).''

### § 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 category 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 en-

sure 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.

(5) Leave described in paragraph (4)(C) may be pooled, and the intern or resident may be afforded leave by the facility in which such person is serving at the time the leave is to be used to the extent of such person's total accumulated leave, whether or not earned at the facility in which such person is serving at the time the leave is to be afforded.

(Added Pub. L. 102–40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 227; amended Pub. L. 104–262, title III, § 345, Oct. 9, 1996, 110 Stat. 3208.)

#### Editorial Notes

REFERENCES IN TEXT

Chapter 21 of the Internal Revenue Code of 1986, referred to in subsec. (c)(2)(C), is classified to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(b) 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

1996—Subsec. (c)(2), (3)(B). Pub. L. 104–262, § 345(1), substituted ''Department facility furnishing hospital care or medical services'' for ''Department hospital'' wherever appearing.

Subsec. (c)(4)(C). Pub. L. 104–262, § 345(2), substituted ''participating facility'' for ''participating hospital''.

Pub. L. 104–262, § 345(1), substituted ''Department facility furnishing hospital care or medical services'' for ''Department hospital''.

Subsec. (c)(5). Pub. L. 104–262, § 345(3), substituted ''facility'' for ''hospital'' in two places.

#### Statutory Notes and Related Subsidiaries

TRAINING IN TELEMEDICINE

Pub. L. 112–154, title I, § 108(b), Aug. 6, 2012, 126 Stat. 1174, provided that:

''(1) IN GENERAL.—The Secretary of Veterans Affairs shall, to the extent feasible, offer medical residents opportunities in training in telemedicine for medical resi-

dency programs. The Secretary shall consult with the Accreditation Council for Graduate Medical Education and with universities with which facilities of the Department have a major affiliation to determine the feasibility and advisability of making telehealth a mandatory component of medical residency programs.

''(2) TELEMEDICINE DEFINED.—In this subsection, the term 'telemedicine' means the use by a health care provider of telecommunications to assist in the diagnosis or treatment of a patient's medical condition.''

### § 7407. Administrative provisions for section 7405 and 7406 appointments

(a) When the Under Secretary for Health determines that it is not possible to recruit qualified citizens for the necessary services, appointments under sections 7405 and 7406 of this title may be made without regard to the citizenship requirements of section 7402(c) of this title or of any other law prohibiting the employment of, or payment of compensation to, a person who is not a citizen of the United States.

(b)(1) Subject to paragraph (2), the Under Secretary for Health may waive for the purpose of the appointment of an individual under section 7405 or 7406 of this title the requirements set forth in section 7402(b) of this title—

(A) that a physician, dentist, psychologist, optometrist, registered nurse, practical or vocational nurse, or physical therapist be licensed or certified, as appropriate;

(B) that the licensure or certification of such an individual be in a State; and

(C) that a psychologist have completed an internship.

(2) The waivers authorized in paragraph (1) may be granted—

(A) in the case of clauses (A) and (C) of such paragraph, if the individual (i) will be employed to conduct research or serve in an academic position, and (ii) will have no responsibility for furnishing direct patient care services; and

(B) in the case of clause (B) of such paragraph, if the individual will be employed to serve in a country other than the United States and the individual's licensure or registration is in the country in which the individual is to serve.

(c) The program of training prescribed by the Secretary in order to qualify a person for the position of full-time physician assistant or expanded-function dental auxiliary shall be considered a full-time institutional program for purposes of chapter 34 of this title. The Secretary may consider training for such a position to be on a less than full-time basis for purposes of such chapter when the combined classroom (and other formal instruction) portion of the program and the on-the-job training portion of the program total less than 30 hours per week.

(d) A person may not be appointed under section 7405 or 7406 of this title to an occupational category described in section 7401(1) of this title or in section 7406 of this title unless the person meets the requirements established in section 7402(d) of this title and regulations prescribed under that section.

(e) In accordance with the provisions of section 7425(b) of this title, the provisions of chapter 34 of title 5 pertaining to part-time career employment shall not apply to part-time appointments under sections 7405 and 7406 of this title.

(Added Pub. L. 102–40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 228; amended Pub. L. 102–405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

#### Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(c)–(g) 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

1992—Subsecs. (a), (b)(1). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

### § 7408. Appointment of additional employees

(a) There shall be appointed by the Secretary under civil service laws, rules, and regulations, such additional employees, other than those provided in section 7306 and paragraphs (1) and (3) of section 7401 of this title and those specified in sections 7405 and 7406 of this title, as may be necessary to carry out the provisions of this chapter.

(b) The Secretary, after considering an individual's existing pay, higher or unique qualifications, or the special needs of the Department, may appoint the individual to a position in the Administration providing direct patient-care services or services incident to direct patient-services at a rate of pay above the minimum rate of the appropriate grade.

(Added Pub. L. 102–40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 103–446, title XII, § 1201(e)(21), Nov. 2, 1994, 108 Stat. 4686.)

#### Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4111 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

1994—Subsec. (a). Pub. L. 103–446 substituted ''civil service'' for ''civil-service''.

### § 7409. Contracts for scarce medical specialist services

(a) The Secretary may enter into contracts with institutions and persons described in subsection (b) to provide scarce medical specialist services at Department facilities. Such services may include the services of physicians, dentists, podiatrists, optometrists, chiropractors, nurses, physician assistants, expanded-function dental auxiliaries, technicians, and other medical support personnel.

(b) Institutions and persons with whom the Secretary may enter into contracts under subsection (a) are the following:

(1) Schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing.

(2) Clinics.

(3) Any other group or individual capable of furnishing such scarce medical specialist services.

(Added Pub. L. 102–40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 229; amended Pub. L. 108–170, title III, § 302(f), Dec. 6, 2003, 117 Stat. 2058.)

**Editorial Notes**

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4117 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

2003—Subsec. (a). Pub. L. 108–170 inserted ''chiropractors,'' after ''optometrists,'' in second sentence.

**Statutory Notes and Related Subsidiaries**

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.

## § 7410. Additional pay authorities

(a) IN GENERAL.—(1) The Secretary may authorize the Under Secretary for Health to pay advance payments, recruitment or relocation bonuses, and retention allowances to personnel appointed under section 7306 of this title or section 7401(4) of this title, or personnel described in section 7401(1) of this title,,[1] or interview expenses to candidates for appointment as such personnel, in a manner consistent with the authority provided under sections 5524a, 5706b, 5753, and 5754 of title 5.

(2) Payments under paragraph (1) shall not be considered in calculating the limitation under section 7431(e)(4) of this title.

(b) SPECIAL INCENTIVE PAY FOR DEPARTMENT PHARMACIST EXECUTIVES.—(1) In order to recruit and retain highly qualified Department pharmacist executives, the Secretary may authorize the Under Secretary for Health to pay special incentive pay of not more than $40,000 per year to an individual of the Veterans Health Administration who is a pharmacist executive.

(2) In determining whether and how much special pay to provide to such individual, the Under Secretary shall consider the following:

(A) The grade and step of the position of the individual.

(B) The scope and complexity of the position of the individual.

(C) The personal qualifications of the individual.

(D) The characteristics of the labor market concerned.

(E) Such other factors as the Secretary considers appropriate.

(3) Special incentive pay under paragraph (1) for an individual is in addition to all other pay (including basic pay) and allowances to which the individual is entitled.

(4) Except as provided in paragraph (5), special incentive pay under paragraph (1) for an individual shall be considered basic pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits.

(5) Special incentive pay under paragraph (1) for an individual shall not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.

(6) Special incentive pay under paragraph (1) may not be awarded to an individual in an amount that would result in an aggregate amount of pay (including bonuses and awards) received by such individual in a year under this title that is greater than the annual pay of the President.

(Added Pub. L. 102–40, title I, § 103(a)[(1)], May 7, 1991, 105 Stat. 198; amended Pub. L. 102–405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 111–163, title VI, § 601(e), May 5, 2010, 124 Stat. 1169; Pub. L. 117–168, title IX, § 906(c)(3), Aug. 10, 2022, 136 Stat. 1813.)

**Editorial Notes**

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–168 designated existing provisions as par. (1), substituted ''personnel appointed under section 7306 of this title or section 7401(4) of this title, or personnel described in section 7401(1) of this title,'' for ''the personnel described in paragraph (1) of section 7401 of this title'' and ''in a manner consistent with'' for ''in the same manner, and subject to the same limitations, as in the case of'', and added par. (2).

2010—Pub. L. 111–163 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1992—Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

**Statutory Notes and Related Subsidiaries**

TREATMENT OF PAY AUTHORITY CHANGES

Pub. L. 117–168, title IX, § 906(c)(4), Aug. 10, 2022, 136 Stat. 1813, provided that: ''For the purposes of the amendments made by paragraph (3) [amending this section], the Secretary of Veterans Affairs shall treat any award or payment made by the Secretary between January 1, 2017, and the date of the enactment of this Act [Aug. 10, 2022] to employees appointed under sections 7306, 7401(1), and 7401(4) of title 38, United States Code, that the Secretary has determined are of equivalent rank to a Senior Executive Service position (as such term is defined in section 3132(a) of title 5, United States Code), as if such amendments had been in effect at the time of such award or payment.''

## § 7411. Full-time board-certified physicians and dentists: reimbursement of continuing professional education expenses

The Secretary shall reimburse any full-time board-certified physician or dentist appointed under section 7401(1) of this title for expenses incurred, up to $1,000 per year, for continuing professional education.

(Added Pub. L. 102–40, title I, § 103(a)[(1)], May 7, 1991, 105 Stat. 199.)

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE

Pub. L. 102–40, title I, § 103(b), May 7, 1991, 105 Stat. 199, provided that: ''Section 7411 of title 38, United States Code, as added by subsection (a), shall apply with respect to expenses incurred for continuing professional education that is pursued after September 30, 1991.''

[1] So in original.

### § 7412. Annual determination of staffing shortages; recruitment and appointment for needed occupations

(a) IN GENERAL.—Not later than September 30 of each year, the Inspector General of the Department shall determine, and the Secretary shall publish in the Federal Register, at a minimum, the five clinical occupations and the five nonclinical occupations of personnel of this title of the Department covered under section 7401 of this title for which there are the largest staffing shortages with respect to each medical center of the Department, as calculated over the five-year period preceding the determination.

(b) RECRUITMENT AND APPOINTMENT.—Notwithstanding sections 3304 and 3309 through 3318 of title 5, the Secretary may, upon a determination by the Inspector General under subsection (a) that there is a staffing shortage throughout the Department with respect to a particular occupation, recruit and directly appoint, during the fiscal year after the fiscal year during which such determination is made, qualified personnel to serve in that particular occupation for the Department.

(Added Pub. L. 113–146, title III, § 301(a)(1), Aug. 7, 2014, 128 Stat. 1784; amended Pub. L. 114–315, title VIII, § 802(4), Dec. 16, 2016, 130 Stat. 1592; Pub. L. 115–46, title II, § 201, Aug. 12, 2017, 131 Stat. 959.)

#### Editorial Notes

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–46 substituted ''at a minimum, the five clinical occupations and the five nonclinical occupations'' for ''the five occupations'' and ''with respect to each medical center of the Department,'' for ''throughout the Department''.

2016—Subsec. (b). Pub. L. 114–315 substituted ''under subsection (a)'' for ''under paragraph (1)''.

#### Statutory Notes and Related Subsidiaries

DEADLINE FOR FIRST DETERMINATION

Pub. L. 113–146, title III, § 301(a)(3), Aug. 7, 2014, 128 Stat. 1784, provided that: ''Notwithstanding the deadline under section 7412 of title 38, United States Code, as added by paragraph (1), for the annual determination of staffing shortages in the Veterans Health Administration, the Inspector General of the Department of Veterans Affairs shall make the first determination required under such section, and the Secretary of Veterans Affairs shall publish in the Federal Register such determination, by not later than the date that is 180 days after the date of the enactment of this Act [Aug. 7, 2014].''

### § 7413. Treatment of podiatrists; clinical oversight standards

(a) PODIATRISTS.—Except as provided by subsection (b), a doctor of podiatric medicine who is appointed as a podiatrist under section 7401(1) of this title is eligible for any supervisory position in the Veterans Health Administration to the same degree that a physician appointed under such section is eligible for the position.

(b) ESTABLISHMENT OF CLINICAL OVERSIGHT STANDARDS.—The Secretary, in consultation with appropriate stakeholders, shall establish standards to ensure that specialists appointed in the Veterans Health Administration to supervisory positions do not provide direct clinical oversight for purposes of peer review or practice evaluation for providers of other clinical specialties.

(Added Pub. L. 115–182, title V, § 502(a)(1), June 6, 2018, 132 Stat. 1475.)

#### Editorial Notes

CODIFICATION

Section 502(a)(1) of Pub. L. 115–182, which directed that this section be added at the end of subchapter I of chapter 74, without specifying the Code title to be amended, was executed by adding this section at the end of this subchapter, to reflect the probable intent of Congress.

### § 7414. Compliance with requirements for examining qualifications and clinical abilities of health care professionals

(a) COMPLIANCE WITH CREDENTIALING REQUIREMENTS.—The Secretary shall ensure that each medical center of the Department, in a consistent manner—

(1) compiles, verifies, and reviews documentation for each health care professional of the Department at such medical center regarding, at a minimum—

(A) the professional licensure, certification, or registration of the health care professional;

(B) whether the health care professional holds a Drug Enforcement Administration registration; and

(C) the education, training, experience, malpractice history, and clinical competence of the health care professional; and

(2) continuously monitors any changes to the matters under paragraph (1), including with respect to suspensions, restrictions, limitations, probations, denials, revocations, and other changes, relating to the failure of a health care professional to meet generally accepted standards of clinical practice in a manner that presents reasonable concern for the safety of patients.

(b) REGISTRATION REGARDING CONTROLLED SUBSTANCES.—(1) Except as provided in paragraph (2), the Secretary shall ensure that each covered health care professional holds an active Drug Enforcement Administration registration.

(2) The Secretary shall—

(A) determine the circumstances in which a medical center of the Department must obtain a waiver under section 302(d) of the Controlled Substances Act (21 U.S.C. 822(d)) with respect to covered health care professionals; and

(B) establish a process for medical centers to request such waivers.

(3) In carrying out paragraph (1), the Secretary shall ensure that each medical center of the Department monitors the Drug Enforcement Administration registrations of covered health care professionals at such medical center in a manner that ensures the medical center is made aware of any change in status in the registration by not later than seven days after such change in status.

(4) If a covered health care professional does not hold an active Drug Enforcement Adminis-

tration registration, the Secretary shall carry out any of the following actions, as the Secretary determines appropriate:

(A) Obtain a waiver pursuant to paragraph (2).

(B) Transfer the health care professional to a position that does not require prescribing, dispensing, administering, or conducting research with controlled substances.

(C) Take appropriate actions under subchapter V of this chapter, with respect to an employee of the Department, or take appropriate contract administration actions, with respect to a contractor of the Department.

(c) REVIEWS OF CONCERNS RELATING TO QUALITY OF CLINICAL CARE.—(1) The Secretary shall ensure that each medical center of the Department, in a consistent manner, carries out—

(A) ongoing, retrospective, and comprehensive monitoring of the performance and quality of the health care delivered by each health care professional of the Department located at the medical center, including with respect to the safety of such care; and

(B) timely and documented reviews of such care if an individual notifies the Secretary of any potential concerns relating to a failure of a health care professional of the Department to meet generally accepted standards of clinical practice in a manner that presents reasonable concern for the safety of patients.

(2) The Secretary shall establish a policy to carry out paragraph (1), including with respect to—

(A) determining the period by which a medical center of the Department must initiate the review of a concern described in subparagraph (B) of such paragraph following the date on which the concern is received; and

(B) ensuring the compliance of each medical center with such policy.

(d) COMPLIANCE WITH REQUIREMENTS FOR REPORTING QUALITY OF CARE CONCERNS.—If the Secretary substantiates a concern relating to the clinical competency of, or quality of care delivered by, a health care professional of the Department (including a former health care professional of the Department), the Secretary shall ensure that the appropriate medical center of the Department timely notifies the following entities of such concern, as appropriate:

(1) The appropriate licensing, registration, or certification body in each State in which the health care professional is licensed, registered, or certified.

(2) The Drug Enforcement Administration.

(3) The National Practitioner Data Bank established pursuant to the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).

(4) Any other relevant entity.

(e) PROHIBITION ON CERTAIN SETTLEMENT AGREEMENT TERMS.—(1) The Secretary may not enter into a settlement agreement relating to an adverse action against a health care professional of the Department if such agreement includes terms that require the Secretary to conceal from the personnel file of the employee a serious medical error or lapse in clinical practice that constitutes a substantial failure to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients.

(2) Nothing in paragraph (1) limits—

(A) the right of an employee to appeal a quality of care determination; or

(B) the rights of an employee under sections 1214 and 1221 of title 5.

(f) TRAINING.—Not less frequently than annually, the Secretary shall provide mandatory training on the following duties to employees of the Department who are responsible for performing such duties:

(1) Compiling, validating, or reviewing the credentials of health care professionals of the Department.

(2) Reviewing the quality of clinical care delivered by health care professionals of the Department.

(3) Taking adverse privileging actions or making determinations relating to other disciplinary actions or employment actions against health care professionals of the Department for reasons relating to the failure of a health care professional to meet generally accepted standards of clinical practice in a manner that presents reasonable concern for the safety of patients.

(4) Making notifications under subsection (d).

(g) DEFINITIONS.—In this section:

(1) The term ''controlled substance'' has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) The term ''covered health care professional'' means an individual employed in a position as a health care professional of the Department, or a contractor of the Department, that requires the individual to be authorized to prescribe, dispense, administer, or conduct research with, controlled substances.

(3) The term ''Drug Enforcement Administration registration'' means registration with the Drug Enforcement Administration under section 303 of the Controlled Substances Act (21 U.S.C. 823) 302 of the Controlled Substances Act (21 U.S.C. 822) by health care practitioners authorized to dispense, prescribe, administer, or conduct research with, controlled substances.

(4) The term ''health care professional of the Department'' means an individual working for the Department in a position described in section 7401 of this title, including a contractor of the Department serving in such a position.

(Added Pub. L. 117–328, div. U, title I, §112(a), Dec. 29, 2022, 136 Stat. 5411.)

**Editorial Notes**

REFERENCES IN TEXT

The Health Care Quality Improvement Act of 1986, referred to in subsec. (d)(3), is title IV of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3784, which is classified generally to chapter 117 (§11101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of Title 42 and Tables.

**Statutory Notes and Related Subsidiaries**

DEADLINE FOR IMPLEMENTATION

Pub. L. 117–328, div. U, title I, §112(c), Dec. 29, 2022, 136 Stat. 5414, provided that: ''The Secretary of Veterans Affairs shall commence the implementation of section 7414 of title 38, United States Code, as added by subsection (a), by the following dates:

''(1) With respect to subsections (a), (c)(2), (d), and (f) of such section, not later than 180 days after the date of the enactment of this Act [Dec. 29, 2022].

''(2) With respect to subsection (c)(1) of such section, not later than one year after the date of the enactment of this Act.

''(3) With respect to subsection (b)(2) of such section, not later than 18 months after the date of the enactment of this Act.''

AUDITS AND REPORTS

Pub. L. 117–328, div. U, title I, §112(d), Dec. 29, 2022, 136 Stat. 5414, provided that:

''(1) AUDITS.—

''(A) IN GENERAL.—The Secretary of Veterans Affairs shall carry out annual audits of the compliance of medical centers of the Department of Veterans Affairs with the matters required by section 7414 of title 38, United States Code, as added by subsection (a).

''(B) CONDUCT OF AUDITS.—In carrying out audits under subparagraph (A), the Secretary—

''(i) may not authorize the medical center being audited to conduct the audit; and

''(ii) may enter into an agreement with another department or agency of the Federal Government or a nongovernmental entity to conduct such audits.

''(2) REPORTS.—

''(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 29, 2022], and annually thereafter for five years, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the audits conducted under paragraph (1).

''(B) ELEMENTS.—Each report submitted under subparagraph (A) shall include a summary of the compliance by each medical center of the Department of Veterans Affairs with the matters required by section 7414 of title 38, United States Code, as added by subsection (a).

''(C) INITIAL REPORT.—The Secretary shall include in the first report submitted under subparagraph (A) the following:

''(i) A description of the progress made by the Secretary in implementing section 7414 of title 38, United States Code, as added by subsection (a), including any matters under such section that the Secretary has not fully implemented.

''(ii) An analysis of the feasibility, advisability, and cost of requiring credentialing employees of the Department to be trained by an outside entity and to maintain a credentialing certification.''

## SUBCHAPTER II—COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

### § 7421. Personnel administration: in general

(a) Notwithstanding any law, Executive order, or regulation, the Secretary shall prescribe by regulation the hours and conditions of employment and leaves of absence of employees appointed under any provision of this title in positions in the Veterans Health Administration listed in subsection (b).

(b) Subsection (a) refers to the following positions:

(1) Physicians.
(2) Dentists.
(3) Podiatrists.
(4) Optometrists.
(5) Registered nurses.
(6) Physician assistants.
(7) Expanded-duty dental auxiliaries.
(8) Chiropractors.
(9) Any position for which the employee is appointed under section 7306 or 7401(4) of this title.

(Added Pub. L. 102–40, title II, §202, May 7, 1991, 105 Stat. 200; amended Pub. L. 108–170, title III, §302(g), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 117–168, title IX, §906(c)(1), Aug. 10, 2022, 136 Stat. 1812.)

**Editorial Notes**

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4108(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

2022—Subsec. (a). Pub. L. 117–168, §906(c)(1)(A), substituted ''this title'' for ''this chapter''.

Subsec. (b)(9). Pub. L. 117–168, §906(c)(1)(B), added par. (9).

2003—Subsec. (b)(8). Pub. L. 108–170 added par. (8).

**Statutory Notes and Related Subsidiaries**

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.

TREATMENT OF PRIOR LEAVE BALANCES

Pub. L. 117–168, title IX, §906(c)(5), Aug. 10, 2022, 136 Stat. 1813, provided that: ''Notwithstanding any other provision of law, the Secretary [of Veterans Affairs] may adjust the leave balance and carryover leave balance of any employee described in section 7421(b)(9) of title 38, United States Code, as amended by paragraph (1)(B), to ensure any leave accrued or carried over before the date of the enactment of this Act [Aug. 10, 2022] remains available to such employee.''

PRESERVATION OF EXISTING COLLECTIVE-BARGAINING ARRANGEMENTS AND PENDING ACTIONS

Pub. L. 102–40, title II, §205, May 7, 1991, 105 Stat. 207, provided that:

''(a) EXISTING COLLECTIVE-BARGAINING ARRANGEMENTS.—Any determination under chapter 71 of title 5, United States Code, of a collective bargaining unit within the Veterans Health Administration of the Department of Veterans Affairs, and any recognition under that chapter of an employee labor organization as the exclusive bargaining representative for employees in a collective bargaining unit of the Department of Veterans Affairs, that is in effect on the date of the enactment of this Act [May 7, 1991] shall not be affected by the amendments made by this Act [see Tables for classification] and shall continue in effect in accordance with the terms of such determination or regulation.

''(b) PENDING CASES.—With respect to cases pending on the date of the enactment of this Act [May 7, 1991], or those cases which are brought before the establishment of either an administrative grievance procedure pursuant to section 7463 of title 38, United States Code (as added by the amendments made by this title), or a negotiated grievance procedure established under a collective bargaining agreement, such cases shall proceed in the same manner as they would have if this Act [see Tables for classification] had not been enacted.''