

108TH CONGRESS
2^D SESSION

H. R. 4231

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2004

Received

AN ACT

To provide for a pilot program in the Department of Veterans Affairs to improve recruitment and retention of nurses, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Department of Vet-
3 erans Affairs Nurse Recruitment and Retention Act of
4 2004”.

5 **SEC. 2. PILOT PROGRAM TO STUDY INNOVATIVE RECRUIT-**
6 **MENT TOOLS TO ADDRESS NURSING SHORT-**
7 **AGES AT DEPARTMENT OF VETERANS AF-**
8 **FAIRS HEALTH-CARE FACILITIES.**

9 (a) PILOT.—(1) Not later than 90 days after the date
10 of the enactment of this Act, the Secretary of Veterans
11 Affairs shall designate a health-care service region, or a
12 section within such a region, in which health-care facilities
13 of the Department of Veterans Affairs are adversely af-
14 fected by a shortage of qualified nurses.

15 (2) The Secretary shall conduct a pilot program in
16 the region or section designated under paragraph (1) to
17 determine the effectiveness of the use of innovative
18 human-capital tools and techniques in the recruitment of
19 qualified nurses for positions at Department health-care
20 facilities and for the retention of nurses at such facilities.
21 In carrying out the pilot program, the Secretary shall
22 enter into a contract with a private-sector entity for serv-
23 ices under the pilot program for recruitment of qualified
24 nurses.

25 (b) PRIVATE-SECTOR RECRUITMENT PRACTICES.—
26 For purposes of the pilot program under this section, the

1 Secretary shall identify and use recruitment practices that
2 have proven effective for placing qualified individuals in
3 positions that are difficult to fill due to shortages of quali-
4 fied individuals or other factors. Recruitment practices to
5 be reviewed by the Secretary for use in the pilot program
6 shall include—

7 (1) employer branding and interactive adver-
8 tising strategies;

9 (2) Internet technologies and automated staff-
10 ing systems; and

11 (3) the use of recruitment, advertising, and
12 communication agencies.

13 (c) STREAMLINED HIRING PROCESS.—In carrying
14 out the pilot program under this section, the Secretary
15 shall, at health-care facilities of the Department in the re-
16 gion or section in which the pilot program is conducted,
17 revise procedures and systems for selecting and hiring
18 qualified nurses to reduce the length of the hiring process.
19 If the Secretary identifies measures to streamline and
20 automate the hiring process that can only be implemented
21 if authorized by law, the Secretary shall submit to the
22 Committees on Veterans' Affairs of the Senate and House
23 of Representatives recommendations for such changes in
24 law as may be necessary to enable such measure to be
25 implemented.

1 (d) REPORT.—Not later than one year after the date
2 of the enactment of this Act, the Secretary shall submit
3 to the Committees on Veterans’ Affairs of the Senate and
4 House of Representatives a report on the extent to which
5 the pilot program achieved the goal of improving the re-
6 cruitment and retention of nurses in Department of Vet-
7 erans Affairs health-care facilities.

8 **SEC. 3. ALTERNATE WORK SCHEDULES FOR NURSES.**

9 (a) ENHANCED SHIFT FLEXIBILITY.—Chapter 74 of
10 title 38, United States Code, is amended by inserting after
11 section 7456 the following new section:

12 **“§ 7456a. Alternate work schedules**

13 “(a) APPLICABILITY.—This section applies to reg-
14 istered nurses appointed under this chapter.

15 “(b) 36/40 WORK SCHEDULE.—(1) Subject to para-
16 graph (2), if the Secretary determines it to be necessary
17 in order to obtain or retain the services of registered
18 nurses at a Department health-care facility, the Secretary
19 may provide, in the case of registered nurses employed at
20 that facility, that such a nurse who works three regularly
21 scheduled 12-hour tours of duty within a workweek shall
22 be considered for all purposes (except computation of full-
23 time equivalent employees for the purposes of determining
24 compliance with personnel ceilings) to have worked a full

1 40-hour basic workweek. Such a schedule may be referred
2 to as a ‘36/40 work schedule’.

3 “(2)(A) Basic and additional pay for a registered
4 nurse who is considered under paragraph (1) to have
5 worked a full 40-hour basic workweek is subject to sub-
6 paragraphs (B) and (C).

7 “(B) The hourly rate of basic pay for such a nurse
8 for service performed as part of a regularly scheduled 36-
9 hour tour of duty within the workweek shall be derived
10 by dividing the nurse’s annual rate of basic pay by 1,872.

11 “(C)(i) Such a nurse who performs a period of service
12 in excess of such nurse’s regularly scheduled 36-hour tour
13 of duty within a workweek is entitled to overtime pay
14 under section 7453(e) of this title, or other applicable law,
15 for officially ordered or approved service performed in ex-
16 cess of—

17 “(I) eight hours on a day other than a day on
18 which such nurse’s regularly scheduled 12-hour tour
19 falls;

20 “(II) 12 hours for any day included in the regu-
21 larly scheduled 36-hour tour of duty; and

22 “(III) 40 hours during an administrative work-
23 week.

24 “(ii) Except as provided in clause (i), a registered
25 nurse to whom this subsection is applicable is not entitled

1 to additional pay under section 7453 of this title, or other
2 applicable law, for any period included in a regularly
3 scheduled 12-hour tour of duty.

4 “(3) A nurse who works a 36/40 work schedule de-
5 scribed in this subsection who is absent on approved sick
6 leave or annual leave during a regularly scheduled 12-hour
7 tour of duty shall be charged for such leave at a rate of
8 ten hours of leave for nine hours of absence.

9 “(c) 7/7 Work Schedule—(1) Subject to paragraph
10 (2), if the Secretary determines it to be necessary in order
11 to obtain or retain the services of registered nurses at a
12 Department health-care facility, the Secretary may pro-
13 vide, in the case of registered nurses employed at such
14 facility, that such a nurse who works seven regularly
15 scheduled 10-hour tours of duty, with seven days off duty,
16 within a two-week pay period, shall be considered for all
17 purposes (except computation of full-time equivalent em-
18 ployees for the purposes of determining compliance with
19 personnel ceilings) to have worked a full 80 hours for the
20 pay period. Such a schedule may be referred to as a ‘7/
21 7 work schedule’.

22 “(2)(A) Basic and additional pay for a registered
23 nurse who is considered under paragraph (1) to have
24 worked a full 80-hour pay period is subject to subpara-
25 graphs (B) and (C).

1 “(B) The hourly rate of basic pay for such a nurse
2 for service performed as part of a regularly scheduled 70-
3 hour tour of duty within the pay period shall be derived
4 by dividing the nurse’s annual rate of basic pay by 1,820.

5 “(C)(i) Such a nurse who performs a period of service
6 in excess of such nurse’s regularly scheduled 70-hour tour
7 of duty within a pay period is entitled to overtime pay
8 under section 7453(e) of this title, or other applicable law,
9 for officially ordered or approved service performed in ex-
10 cess of—

11 “(I) eight hours on a day other than a day on
12 which such nurse’s regularly scheduled 10-hour tour
13 falls;

14 “(II) 10 hours for any day included in the regu-
15 larly scheduled 70-hour tour of duty; and

16 “(III) 80 hours during a pay period.

17 “(ii) Except as provided in subparagraph (i), a reg-
18 istered nurse to whom this subsection is applicable is not
19 entitled to additional pay under section 7453 of this title,
20 or other applicable law, for any period included in a regu-
21 larly scheduled 10-hour tour of duty.

22 “(3) A nurse who works a 7/7 work schedule de-
23 scribed in this subsection who is absent on approved sick
24 leave or annual leave during a regularly scheduled 12-hour

1 tour of duty shall be charged for such leave at a rate of
2 eight hours of leave for seven hours of absence.

3 “(d) 9-Month WORK SCHEDULE.—The Secretary
4 may authorize a registered nurse appointed under section
5 7405 of this title, with the nurse’s written consent, to
6 work full-time for nine months with three months off duty,
7 within a fiscal year, and be paid at 75 percent of the full-
8 time rate for such nurse’s grade for each pay period of
9 that fiscal year. A nurse working on such a schedule for
10 any fiscal year shall be considered a $\frac{3}{4}$ full-time equivalent
11 employee for that fiscal year in computing full-time equiv-
12 alent employees for the purposes of determining compli-
13 ance with personnel ceilings. Service on such a schedule
14 shall be considered to be part-time service for purposes
15 of computing benefits under chapters 83 and 84 of title
16 5.

17 “(e) REGULATIONS.—The Secretary shall prescribe
18 regulations for the implementation of this section.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of chapter 74 of such title is amended
21 by inserting after the item relating to section 7456 the
22 following new item:

“7456a. Alternate work schedules.”.

1 **SEC. 4. TECHNICAL CORRECTION TO LISTING OF CERTAIN**
2 **HYBRID POSITIONS IN VETERANS HEALTH**
3 **ADMINISTRATION.**

4 Section 7401(3) of title 38, United States Code, is
5 amended—

6 (1) by striking “and dental technologists” and
7 inserting “technologists, dental hygienists, dental as-
8 sistants”; and

9 (2) by striking “technicians, therapeutic
10 radiologic technicians, and social workers” and in-
11 sserting “technologists, therapeutic radiologic tech-
12 nologists, social workers, blind rehabilitation special-
13 ists, and blind rehabilitation outpatient specialists”.

14 **SEC. 5. ASSISTANCE FOR HIRING AND RETENTION OF**
15 **NURSES AT STATE VETERANS HOMES.**

16 (a) IN GENERAL.—(1) Chapter 17 of title 38, United
17 States Code, is amended by inserting after section 1743
18 the following new section:

19 **“§ 1744. Hiring and retention of nurses: payments to**
20 **assist States**

21 “(a) PAYMENT PROGRAM.—The Secretary shall make
22 payments to States under this section for the purpose of
23 assisting State homes in the hiring and retention of nurses
24 and the reduction of nursing shortages at State homes.

25 “(b) ELIGIBLE RECIPIENTS.—Payments to a State
26 for a fiscal year under this section shall, subject to submis-

1 sion of an application, be made to any State that during
2 that year—

3 “(1) receives per diem payments under this
4 subchapter for that fiscal year; and

5 “(2) has in effect an employee incentive schol-
6 arship program or other employee incentive program
7 at a State home designed to promote the hiring and
8 retention of nursing staff and to reduce nursing
9 shortages at that home.

10 “(c) USE OF FUNDS RECEIVED.—A State may use
11 an amount received under this section only to provide
12 funds for a program described in subsection (b)(2). Any
13 program shall meet such criteria as the Secretary may
14 prescribe. In prescribing such criteria, the Secretary shall
15 take into consideration the need for flexibility and innova-
16 tion.

17 “(d) LIMITATIONS ON AMOUNT OF PAYMENT.—(1)
18 A payment under this section may not be used to provide
19 more than 50 percent of the costs for a fiscal year of the
20 employee incentive scholarship or other incentive program
21 for which the payment is made.

22 “(2) The amount of the payment to a State under
23 this section for any fiscal year is, for each State home
24 in that State with a program described in subsection
25 (b)(2), the amount equal to 2 percent of the amount of

1 payments estimated to be made to that State, for that
2 State home, under section 1741 of this title for that fiscal
3 year.

4 “(e) APPLICATIONS.—A payment under this section
5 for any fiscal year with respect to any State home may
6 only be made based upon an application submitted by the
7 State seeking the payment with respect to that State
8 home. Any such application shall describe the nursing
9 shortage at the State home and the employee incentive
10 scholarship program or other incentive program described
11 in subsection (c) for which the payment is sought.

12 “(f) SOURCE OF FUNDS.—Payments under this sec-
13 tion shall be made from funds available for other pay-
14 ments under this subchapter.

15 “(g) DISBURSEMENT.—Payments under this section
16 to a State home shall be made as part of the disbursement
17 of payments under section 1741 of this title with respect
18 to that State home.

19 “(h) USE OF CERTAIN RECEIPTS.—The Secretary
20 shall require as a condition of any payment under this sec-
21 tion that, in any case in which the State home receives
22 a refund payment made by an employee in breach of the
23 terms of an agreement for employee assistance that used
24 funds provided under this section, the payment shall be

1 returned to the State home's incentive program account
2 and credited as a non-Federal funding source.

3 “(i) ANNUAL REPORT FROM PAYMENT RECIPI-
4 ENTS.—Any State home receiving a payment under this
5 section for any fiscal year, shall, as a condition of the pay-
6 ment, be required to agree to provide to the Secretary a
7 report setting forth in detail the use of funds received
8 through the payment, including a descriptive analysis of
9 how effective the incentive program has been on nurse
10 staffing in the State home during that fiscal year. The
11 report for any fiscal year shall be provided to the Sec-
12 retary within 60 days of the close of the fiscal year and
13 shall be subject to audit by the Secretary. Eligibility for
14 a payment under this section for any later fiscal year is
15 contingent upon the receipt by the Secretary of the annual
16 report under this subsection for the previous year in ac-
17 cordance with this subsection.

18 “(j) REGULATIONS.—The Secretary shall prescribe
19 regulations to carry out this section. The regulations shall
20 include the establishment of criteria for the award of pay-
21 ments under this section.”.

22 (2) The table of sections at the beginning of such
23 chapter is amended by inserting after section 1743 the
24 following new item:

“1744. Hiring and retention of nurses: payments to assist States.”.

1 (b) IMPLEMENTATION.—The Secretary of Veterans
2 Affairs shall implement section 1744 of title 38, United
3 States Code, as added by subsection (a), as expeditiously
4 as possible. The Secretary shall establish such interim pro-
5 cedures as necessary so as to ensure that payments are
6 made to eligible States under that section commencing not
7 later than January 1, 2005, notwithstanding that regula-
8 tions under subsection (j) of that section may not have
9 become final.

10 **SEC. 6. TECHNICAL CLARIFICATION.**

11 Section 8111(d)(2) of title 38, United States Code,
12 is amended by inserting before the period at the end of
13 the last sentence the following: “and shall be available for
14 any purpose authorized by this section”.

15 **SEC. 7. UNDER SECRETARY FOR HEALTH.**

16 Section 305(a)(2) of title 38, United States Code, is
17 amended—

18 (1) in the matter preceding subparagraph (A),
19 by striking “shall be a doctor of medicine and”; and

1 (2) in subparagraph (A), by striking “and in
2 health-care” and inserting “or in health-care”.

 Passed the House of Representatives September 30,
2004.

Attest:

JEFF TRANDAHL,

Clerk.