

# EXPENDITURES FOR VISITORS CENTER AT LITTLE ROCK CENTRAL HIGH SCHOOL NATIONAL HISTORIC SITE

Mr. FRIST. I ask unanimous consent that the Energy and Natural Resources Committee be discharged from further consideration of S. Res. 420 and that the Senate then proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 420) recommending expenditures for an appropriate visitors center at Little Rock Central High School National Historic Site to commemorate the desegregation of Little Rock Central High School.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 420) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

## S. RES. 420

Whereas the United States recognizes that in September 1957, 9 young students changed the course of American history by claiming the right to receive an equal education;

Whereas Ernest Green, Elizabeth Eckford, Jefferson Thomas, Terrence Roberts, Carlotta Walls, Minnijean Brown, Gloria Ray, Thelma Mothershed, and Melba Pattillo, known as the "Little Rock Nine", and their parents had the courage necessary to break the bonds of prejudice and desegregation and venture onto the world stage, with full knowledge of the perils and complexities inherent in their endeavor;

Whereas despite their effort to enroll at Little Rock Central High School and receive an education, the Little Rock Nine were met with severe adversity;

Whereas Little Rock Central High School became not only a crucial battleground in the struggle for civil rights, but symbolic of the United States Government's commitment to eliminating separate systems of education for African-Americans and Caucasians;

Whereas the enrollment of the Little Rock Nine was recognized by Dr. Martin Luther King, Jr. as such a significant event in the struggle for civil rights that he attended the graduation of the first African-American from Little Rock Central High School;

Whereas the sacrificial accomplishments that were made in September 1957 have continuing benefits for the United States today;

Whereas the United States will always revere the accomplishments that 9 young high school students made by showing the Nation and the world that "all men are created equal" and the rule of law is paramount in the democracy of the United States;

Whereas the Little Rock Nine were forced to obtain the blessings of liberty that are inherent in the United States Constitution through the intervention of the judicial

branch and executive branch of the United States Government;

Whereas existing visitor facilities at Little Rock Central High School are inadequate, resulting in limited opportunities for citizens to learn about civil rights and our Nation's heritage; and

Whereas the legislative branch of the United States Government has the opportunity to appropriately commemorate the legacy that these heroic individuals left by fully funding the design and construction of an informative memorial: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) the courage displayed by the Little Rock Nine should be commemorated as an example of American sacrifice through extreme adversity;

(2) Congress should fully fund the design and construction of a visitor center at Little Rock Central High School National Historic Site; and

(3) the new facilities should open by September 2007 in order to commemorate the 50th anniversary of the historic events that occurred at Little Rock Central High School.

## PROTECTING OLDER AMERICANS FROM FRAUD MONTH

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 749, S. Res. 424.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 424) designating October 2004 as Protecting Older Americans From Fraud Month.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 424) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

## S. RES. 424

Whereas perpetrators of financial crimes frequently target their fraud schemes at older Americans because older Americans possess a large percentage of the individual household wealth in the United States;

Whereas many older Americans have been divested of their hard-earned life savings by fraud and frequently pay a high emotional cost, losing not only their money, but also their self-respect and dignity;

Whereas perpetrators of fraud schemes against older Americans reach their victims through the telephone, the mail, or the Internet;

Whereas the United States Postal Inspection Service responded to nearly 80,000 fraud complaints, arrested 1,453 fraud offenders, secured nearly 1,387 fraud convictions, and initiated 102 civil or administrative actions involving fraud in fiscal year 2003;

Whereas fraud investigations by the United States Postal Inspection Service in fiscal year 2003 resulted in nearly \$1,500,000,000 in court-ordered and voluntary restitution payments;

Whereas older Americans are often the disproportionate targets of cross-border fraud, including prize promotions, sweepstakes scams, foreign money offers, advance-fee loans, and foreign lotteries, and file 20 percent of all cross-border fraud complaints;

Whereas there was an 80 percent increase in 2003 of reports of Internet fraud targeting older Americans, and the amount of money lost by older Americans to Internet fraud increased from \$2,690,618 in 2002 to \$12,818,313 in 2003, a 375 percent increase in money lost;

Whereas the Federal Trade Commission reports that 27,300,000 people in the United States have been victims of identity theft in the last 5 years, including 9,900,000 people in the last year alone, and that identity theft has cost businesses and financial institutions nearly \$48,000,000,000, in addition to the reported \$5,000,000,000 in out-of-pocket expenses incurred by consumer fraud victims;

Whereas there was a 200 percent increase in 2002 of identity theft targeting older Americans, and credit card fraud is perpetrated against older Americans at a higher rate than the general population of the United States;

Whereas the Federal Trade Commission continues to successfully implement its do-not-call registry, with 60 percent of consumers surveyed stating that they registered and 80 percent of the registered consumers surveyed reporting fewer calls, but more older Americans need to be aware that the do-not-call registry is available;

Whereas fraud schemes targeting older Americans have caused losses estimated at millions of dollars a year, and have cost some older Americans their homes;

Whereas consumer awareness is the best protection from telemarketing, mail, Internet, and identity fraud schemes, and the Federal Trade Commission and the United States Postal Inspection Service have resources available to educate and assist the public; and

Whereas it is vital to increase public awareness of the enormous impact that fraud has on older Americans and to educate the public, older Americans, their families, and their caregivers about a wide array of fraud schemes, such as telemarketing, mail, Internet, and identity fraud, and how to report suspected fraud to the appropriate authorities: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates October 2004 as "Protecting Older Americans From Fraud Month"; and

(2) requests that the President issue a proclamation calling on the people of the United States to observe the month with appropriate activities and programs that—

(A) prevent the purveyors of telemarketing, mail, Internet, and identity fraud from victimizing the people of the United States; and

(B) educate and inform the public, older Americans, their families, and their caregivers about a number of financial crimes, such as telemarketing, mail, Internet, and identity fraud.

## DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE PERSONNEL ENHANCEMENT ACT OF 2004

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 713, S. 2484.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2484) to amend title 38, United States Code, to simplify and improve pay

provisions for physicians and dentists, to authorize alternate work schedules and executive pay for nurses.

The Senate proceeded to consider the bill which had been reported from the Committee on Veterans' Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 2484

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **[SECTION 1. SHORT TITLE.**

[This Act may be cited as the "Department of Veterans Affairs Health Care Personnel Enhancement Act of 2003".]

#### **[SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

[Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

#### **[SEC. 3. IMPROVEMENT AND SIMPLIFICATION OF PAY PROVISIONS FOR PHYSICIANS AND DENTISTS.**

[(a) Chapter 74 is amended—

[(1) In section 7404b—

[(A) by striking "(1)" after "(b)";

[(B) by striking the list of position grades under the caption, "PHYSICIAN AND DENTIST SCHEDULE" and inserting in lieu thereof the following:

["Physician grade.

["Dentist grade."; and

[(C) by striking paragraph (2) in its entirety;

[(2) In section 7404(c) by striking "special"; and

[(3) By striking Subchapter III in its entirety and inserting in lieu thereof the following sections:

#### **["SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS**

##### **["§ 7431. Pay authority**

["(a) In order to recruit and retain highly qualified physicians and dentists in the Veterans Health Administration, the Secretary shall establish and periodically adjust the rates of pay for physicians and dentists based upon the factors specified in subsection (b). Total pay shall be benchmarked to representative salaries of non-Department physicians, dentists, and health care clinician-executives.

["(b) Pay for physicians and dentists employed in the Veterans Health Administration shall have three components:

["(1) **BASE PAY.**—This shall be a uniform pay band applicable nationwide. The minimum rate shall be the maximum rate for Chief grade in the Veterans Health Administration Physician and Dentist Pay Schedule in effect on the day before the date of enactment of this Act. The maximum rate may not exceed the rate of basic pay authorized by section 5316 of title 5 for Level V of the Executive Schedule. The Secretary shall adjust annually the minimum rate by the same percentage as the adjustment under section 5303 of title 5 in the rates of pay for the General Schedule, and the maximum rate in accordance with section 5318 of title 5. Administration facilities, under regulations prescribed by the Secretary, may set individual base pay anywhere within the pay band.

["(2) **MARKET PAY.**—This shall be a variable pay band based on geographic area, specialty, assignment, personal qualifications, and individual experience, and shall be es-

tablished and adjusted locally in accordance with regulations prescribed under subsection (c). Administration facilities will set individual market pay in accordance with regulations prescribed by the Secretary. The Under Secretary for Health shall periodically review and recommend to the Secretary adjustments to the market pay band based on published healthcare workforce employment and compensation data. The Secretary may adjust the market pay band periodically based on the recommendations of the Under Secretary and in response to changing health-care labor trends.

##### **["(3) PERFORMANCE PAY.—**

["(A) There shall be a variable pay band linked to the physician's or dentist's achievement of specific corporate goals and individual performance objectives. Physicians and dentists other than those specified in subsection (f)(1) shall not be eligible for this component during the first year of appointment. The amount payable to a physician or dentist for this component may vary based on individual achievement. The performance component paid to any physician or dentist other than those specified in subsection (f)(1) will be in accordance with regulations prescribed by the Secretary and may not exceed \$10,000 in a year.

["(B) In accordance with regulations prescribed by the Secretary, ten percent of the benchmark total pay for physicians and dentists specified in subsection (f)(1) shall be linked to the physician's or dentist's achievement of specific corporate goals and individual performance objectives as a performance component. Administration facilities may set the performance pay in accordance with regulations prescribed by the Secretary.

["(c) Compensation paid under this subchapter shall be considered pay for all purposes, included but not limited to retirement benefits under chapters 83 and 84 of title 5, United States Code, and other benefits. Notwithstanding the preceding sentence, amounts paid for performance pay under subsection (b)(3)(A) shall not be considered pay for retirement benefits under chapters 83 and 84 of title 5, United States Code.

["(d) Any decrease in pay that results from an adjustment to the market or performance component of a physician's or dentist's total compensation does not constitute an adverse action.

["(e) In no case may the total amount of compensation paid to a physician or dentist under this title in any one year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3, United States Code.

##### **["(f) COVERED POSITIONS.—**

["(1) This subsection applies to physicians and dentists in the following positions: Chiefs of Staff or equivalent facility-level and Network-level clinical management positions (including Network Clinical Service Managers), facility and Network or Regional executive positions (including Network Service Line Coordinators and Medical Center/Health Care System Directors), Central Office executive positions, and such other positions under this title as the Secretary may determine in accordance with regulations prescribed in accordance with section 7434(a).

["(2) Notwithstanding the special relationships of the Veterans Health Administration with affiliated institutions under section 7302, physicians and dentists serving in covered positions and receiving compensation under this subchapter may not receive any compensation on or after the date specified in regulations issued by the Secretary, through employment or contract with, or negotiate or accept any offer of employment from, any institution or other entity that is affiliated with the VA medical center to

which they are assigned, or affiliated with a VA medical center which falls under their official responsibilities. This limitation shall include receiving compensation through or from practice groups or any other entities associated with the affiliated institution(s), or from entities under contract with the affiliated institution(s). Compensation includes anything of monetary value, including but not limited to honoraria, salary, and any fringe benefits such as: tuition waiver, insurance protection, contributions to a retirement fund, payment for books, below-market interest loans, or employee discounts. Nothing in this section precludes physicians and dentists in covered positions from holding uncompensated appointments as other than officer, director, or trustee with affiliated institutions in furtherance of section 7302.

["(3) Subject to any conditions the Secretary may be regulation prescribe, the Secretary may, on a case-by-case basis, suspend or waive the limitation in paragraph (2) to an individual physician or dentist, when necessary and appropriate to carry out the purposes of section 7302, to assist communities or practice groups to meet medical needs which otherwise would not be met, or where the Secretary determines that suspension or waiver would be in the best interest of the United States. The Secretary shall make any suspension or waiver made pursuant to this paragraph in writing.

##### **["§ 7432. Transition to new pay system**

["(a) All current special pay agreements entered into under the provisions of this subchapter in effect on the day before the date of enactment of this Act shall terminate on the date of enactment of this Act. Any physician or dentist in receipt of special pay on that date shall continue to be compensated as if such agreement were still in effect until the date specified in regulations issued by the Secretary implementing this new subchapter.

["(b) Physicians and dentists appointed or reassigned on or after the date of enactment of this Act, but before implementation of this subchapter shall be compensated in accordance with sections 7404, 7405, 7433, 7434, 7435, and 7436, as applicable, in effect on the day before the date of enactment of this Act. Any such physician or dentist shall continue to be compensated at the applicable rates until such date specified in regulations issued by the Secretary implementing the new pay system. No special pay agreement will be required of any physician or dentist receiving such pay.

["(c) During the period from the date of enactment of this Act through the date of implementation of this subchapter, physicians and dentists paid pursuant to this section shall be subject to paragraphs (1), (2), (4), (5), and (6) of subsection (b) of section 7438 in effect on the day before the date of enactment of this Act.

["(d) The amount of pay paid under this subchapter for a physician or dentist appointed before the effective date of regulations implementing this subchapter shall be not less than the amount of base pay and special pay such physician or dentist received under this title on the day before such effective date.

["(e) Special pay subject to the provisions of section 7438, as in effect before the date of enactment of this section, or subject to subsection (c), paid to Veterans Health Administration physicians and dentists appointed before the effective date of regulations implementing this subchapter and who separate after such effective date, shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5.

**["§ 7433. Pay for Under Secretary for Health**

["(a) Section 5314 of title 5 establishes the base pay for the Under Secretary for Health at Level III of the Executive Schedule.

["(b) In addition to base pay under section 5314 of title 5, the Under Secretary for Health shall be eligible for Market Pay under section 7431(b)(2).

["(c) TRANSITION.—The current special pay agreement of the Under Secretary for Health entered into under the provisions of this subchapter in effect on the day before the date of enactment of this Act shall terminate on the date of enactment of this Act. The incumbent Under Secretary for Health on the date of enactment of this Act shall continue to receive special pay as if such agreement were still in effect until the date specified in regulations issued by the Secretary implementing this new subchapter. Any Under Secretary for Health appointed on or after the date of enactment of this Act, but before the date specified in regulations issued by the Secretary implementing this new subchapter, shall receive special pay in accordance with sections 7432(d)(2), 7433, and 7437(a) in effect on the day before the date of enactment of this Act.

**["§ 7434. Administrative provisions**

["(a) After receiving the recommendations of the Under Secretary for Health, the Secretary, pursuant to the authority in section 7421(a), shall prescribe regulations implementing the physician and dentist pay system established in this new subchapter. Such regulations shall include the method for computing the pay for all physicians and dentists in the Veterans Health Administration under this title.

["(b) Eighteen months after the Secretary issues regulations implementing this subchapter and annually thereafter for the next ten years, the Secretary shall provide to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation of the authorities under this subchapter. Each report shall include:

["(1) a description of the rates of pay in effect during the preceding fiscal year with a comparison to the rates in effect during the previous fiscal year by facility and by specialty;

["(2) the number of physicians and dentists who left employment with the Veterans Health Administration during the preceding year;

["(3) the number of unfilled physician and dentist positions in each specialty in the Veterans Health Administration, the average and maximum lengths of time that such positions have been unfilled, and a summary of the reasons that such positions remain unfilled; and

["(4) an assessment of the impact of implementation of this subchapter on efforts to recruit and retain physicians and dentists in the Veterans Health Administration.

[In addition, the first two reports following implementation of this subchapter shall also include a comparison of staffing levels, contract expenditures, and average salary of physicians and dentists by facility and specialty for the preceding and previous fiscal years."

["(b) The title and list of sections for Subchapter III in the table of sections at the beginning of Chapter 74 is amended to read as follows:

["SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS

["Sec. 7431. Pay authority.

["Sec. 7432. Transition to new pay system.

["Sec. 7433. Pay for Under Secretary for Health.

["Sec. 7434. Administrative provisions."

**["SEC. 4. ALTERNATE WORK SCHEDULES.**

["(a) Chapter 74 is amended by adding a new section 7456a:

**["§ 7456a. Alternate work schedules**

["(a) COVERAGE.—This section applies to registered nurses appointed under this chapter.

["(b) 36/40 WORK SCHEDULE.—

["(1) Subject to paragraph (2), if the Secretary determines it be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work three regularly scheduled 12-hour tours of duty within a workweek shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 40-hour basic workweek.

["(2)(A) Basic and additional pay for a registered nurse who is considered under paragraph (1) to have worked a full 40-hour basic workweek shall be subject to subparagraphs (B) and (C).

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

["(C)(i) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled 36-hour tour of duty within a workweek is entitled to overtime pay under section 7453(e) of this title, or other applicable law, for officially ordered or approved service performed in excess of eight hours on a day other than a day on which such nurse's regularly scheduled three 12-hour tours fall, or in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty, or in excess of 40 hours during an administrative workweek.

["(ii) Except as provided in subparagraph (i), a registered nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 12-hour tour of duty.

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

["(c) 7/7 WORK SCHEDULE.—

["(1) Subject to paragraph (2), if the Secretary determines it be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work seven regularly scheduled 10-hour tours of duty, with seven days off duty, within a two-week pay period, shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings) to have worked a full 80 hours for the pay period.

["(2)(A) Basic and additional pay for a registered nurse who is considered under paragraph (1) to have worked a full 80-hour pay period shall be subject to subparagraphs (B) and (C).

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

["(C)(i) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled 70-hour tour of duty within a pay period is entitled to overtime pay under section 7453(e) of this title, or other applicable law, for officially ordered or approved

service performed in excess of eight hours on a day other than a day on which such nurse's regularly scheduled seven 10-hour tours fall, or in excess of 10 hours for any day included in the regularly scheduled 70-hour tour of duty, or in excess of 80 hours during a pay period.

["(ii) Except as provided in subparagraph (i), a registered nurse to whom this subsection is applicable is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 10-hour tour of duty.

["(3) A nurse who works a 7/7 work schedule described in this subsection who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of eight hours of leave for seven hours of absence.

["(d) 9-MONTH WORK SCHEDULE.—The Secretary may authorize a registered nurse appointed under section 7405, with the nurse's written consent, to work full-time for nine months with three months off duty, within a fiscal year, and be paid at 75 percent of the full-time rate for such nurse's grade for each pay period of such fiscal year. Such employee shall be considered a .75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings. Service on this schedule shall be considered part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

["(e) The Secretary shall prescribe regulations for the implementation of this section."

["(b) The title and list of sections for Subchapter IV in the table of sections at the beginning of Chapter 74 is amended to read as follows:

["SUBCHAPTER IV—PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

["Sec. 7451. Nurses and other health-care personnel: competitive pay.

["Sec. 7452. Nurses and other health-care personnel: administration of pay.

["Sec. 7453. Nurses: additional pay.

["Sec. 7454. Physician assistants and other health care professionals: additional pay.

["Sec. 7455. Increases in rates of basic pay.

["Sec. 7456. Nurses: special rules for weekend duty.

["Sec. 7456a. Alternate work schedules.

["Sec. 7457. On-call pay.

["Sec. 7458. Recruitment and retention bonus pay."

**["SEC. 5. NURSE EXECUTIVE SPECIAL PAY.**

["(a) Section 7452 is amended by adding at the end thereof:

["(g)(1) In order to recruit and retain highly qualified Department nurse executives, the Secretary, in accordance with regulations the Secretary shall prescribe, shall pay special pay to the nurse executive at each Department health-care facility or at Central Office.

["(2) Special pay paid under paragraph (1) shall be a minimum of \$10,000 and a maximum of \$25,000. The amount paid to each nurse executive shall be based on factors such as the grade of the nurse executive position, the scope and complexity of the nurse executive position, the nurse executive's personal qualifications, the characteristics of the health-care facility, e.g., tertiary, single site or multi-site, nature and number of specialty care units, demonstrated recruitment and retention difficulties, and such other factors the Secretary deems appropriate.

["(3) Special pay paid under paragraph (1) shall be in addition to any other pay (including basic pay) and allowances to which the

nurse executive is entitled, and shall be considered pay for all purposes, including but not limited to retirement benefits under chapters 83 and 84 of title 5, United States Code, and other benefits, but shall not be considered basic pay for purposes of adverse actions under subchapter V.”

#### **[SEC. 6. EFFECTIVE DATE.]**

[The amendments to title 38, United States Code, contained herein shall take effect on the first day of the first pay period on or after the later of April 1, 2004, or six months after the date of enactment.]

#### **[SEC. 7. ADMINISTRATIVE PROVISION.]**

[(a) Chapter 74 is amended by adding a new section 7427:

#### **[“§ 7427. Functions**

“The functions assigned to the Secretary and other officers of the Department of Veterans Affairs under this chapter are vested in their discretion.”]

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004”.

#### **SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

#### **SEC. 3. SIMPLIFICATION AND IMPROVEMENT OF GRADE AND PAY PROVISIONS FOR PHYSICIANS AND DENTISTS.**

(a) SIMPLIFICATION OF GRADES AND GRADE REQUIREMENTS.—Section 7404(b) is amended—

(1) by striking “(1)” after “(b)”;

(2) in the Physician and Dentist Schedule, by striking the items relating to the grades and inserting the following:

“Physician grade.

“Dentist grade.”; and

(3) by striking paragraph (2).

(b) SIMPLIFICATION AND IMPROVEMENT OF PAY AUTHORITIES.—Subchapter III of chapter 74 is amended to read as follows:

#### **“SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS**

#### **“§ 7431. Pay**

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

“(1) Base pay as provided for under subsection (b).

“(2) Market pay as provided for under subsection (c).

“(3) Incentive pay as provided for under subsection (d).

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

“(1) Each physician and dentist is entitled to base pay determined under the Physician and Dentist Base and Longevity Pay Schedule.

“(2) The Physician and Dentist Base and Longevity Pay Schedule is composed of 15 rates of base pay designated, from the lowest rate of pay to the highest rate of pay, as base pay steps 1 through 15.

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

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

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

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

“(1) Subject to paragraph (3), each physician and dentist is eligible for market pay.

“(2) Market pay shall consist of pay intended to reflect the value to the Veterans Health Administration of the skills, experience, and availability of a particular physician or dentist within a particular health care labor market.

“(3) The annual amount of the market pay payable to a physician or dentist shall be determined by the Secretary on a case-by-case basis, subject to paragraph (5). The sum of the total amount of the market pay determined for a physician or dentist under this subsection and the annual rate of base pay payable to the physician or dentist under subsection (b) may not be less than the minimum amount, nor more than the maximum amount, applicable to the physician or dentist under paragraph (4).

“(4)(A) Not less often than once every two years, the Secretary shall prescribe for Departmentwide applicability the minimum and maximum amounts of annual pay (excluding incentive pay under subsection (d)) that may be paid under this section to physicians and the minimum and maximum amounts of annual pay (excluding incentive pay under subsection (d)) that may be paid under this section to dentists.

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

“(5)(A) In determining the amount of the market pay for a physician or dentist and determining a tier (if any) to apply to a physician or

dentist under paragraph (4)(B), the Secretary shall consult with and consider the recommendations of the Medical Professional Standards Board for the medical facility of the Department at which the physician or dentist is employed, except in the case of a physician or dentist whose market pay is determined under subparagraph (B).

“(B) In the case of a physician or dentist who is a member of a Medical Professional Standards Board, the Secretary shall determine the amount of the market pay and the tier (if any) applicable to the physician or dentist under paragraph (4)(B) in accordance with such procedures and standards as the Secretary shall prescribe. Such procedures and standards shall, to the maximum extent practicable, be similar to the procedures and standards applicable to determinations of the amount of market pay and the tier applicable to physicians and dentists under paragraph (4)(B) who are not members of a board. Under such regulations, no member of a board may participate in or have a consultative role in determining the amount of market pay or tier of such member or any other member of such board.

“(C) A Medical Professional Standards Board consulted under this subparagraph shall consist of at least three and not more than five persons, each of whom is either a physician or a dentist. Not less than a majority of the members of the board shall be practicing clinicians in their professions.

“(6) Subject to paragraph (7), the determination of the amount of market pay of a physician or dentist shall take into account—

“(A) the level of experience of the physician or dentist in the specialty or subspecialty of the physician or dentist;

“(B) the need for the specialty or subspecialty of the physician or dentist at the Department facility concerned;

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

“(D) the professional reputation of the physician or dentist;

“(E) the board certifications, if any, of the physician or dentist;

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

“(G) such other considerations as the Secretary considers appropriate.

“(7) The amount that any consideration specified in paragraph (6) may contribute to the amount of market pay may not exceed, or be less than, such amount as the Secretary may specify in regulations prescribed under section 7433 of this title, or in directives issued for purposes of this subsection.

“(8) In determining amounts of market pay, the Secretary—

“(A) shall consult two or more national surveys of pay for physicians or dentists, as applicable, whether prepared by public, private, or quasi-public entities; and

“(B) may utilize the recommendations or assistance of one or more boards of physicians or dentists, as applicable, that are appointed by the Secretary for purposes of this subsection.

“(9) The amount of market pay of a physician or dentist shall be adjusted at such times as the Secretary considers appropriate in order to ensure the retention of qualified physicians and dentists by the Veterans Health Administration.

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

“(11) No adjustment of the amount of market pay of a physician or dentist under paragraph (9) or (10) may result in a reduction of the amount of market pay of the physician or dentist.”

“(d) INCENTIVE PAY.—One element of pay for physicians and dentists shall be incentive pay. Incentive pay shall meet the following requirements:

“(1) Each physician and dentist is eligible for incentive pay.

“(2) Incentive pay shall consist of an amount intended to recognize outstanding contributions by a physician or dentist to—

“(A) the facility in which employed;

“(B) the furnishing of care to veterans; or

“(C) the practice of medicine or dentistry, as applicable.

“(3) The amount of incentive pay shall be determined for a physician or dentist by the Secretary.

“(4) The amount of incentive pay shall be determined for a physician or dentist on a case-by-case basis.

“(5) The amount of incentive pay paid to a physician or dentist in a calendar year may not exceed \$10,000.

“(e) DELEGATION OF RESPONSIBILITIES.—The Secretary may delegate to an appropriate officer or employee of the Department any responsibility of the Secretary under subsection (c) or (d), except for the responsibilities of the Secretary under subsection (c)(4).

“(f) LIMITATION ON TOTAL COMPENSATION.—In no case may the total amount of compensation paid to a physician or dentist under this section in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

“(g) TREATMENT OF PAY.—(1) Except as provided in paragraph (2), pay under this subchapter shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

“(2) Incentive pay under subsection (d) shall not be considered pay for purposes of retirement benefits under chapters 83 and 84 of title 5.

“(h) DECREASES IN CERTAIN PAY NOT TREATABLE AS ADVERSE ACTION.—A decrease in pay of a physician or dentist resulting from an adjustment in the amount of incentive pay of the physician or dentist under subsection (d) shall not be treated as an adverse action.

#### “§ 7432. Pay of Under Secretary for Health

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

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

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

“(3) In establishing the amount of market pay of the Under Secretary for Health under this subsection, the Secretary shall utilize an appropriate health care labor market selected by the Secretary for purposes of this subsection.

#### “§ 7433. Administrative matters

“(a) REGULATIONS.—(1) The Secretary shall prescribe regulations relating to the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

“(2) In prescribing the regulations, the Secretary shall take into account the recommendations of the Under Secretary for Health on the administration of this subchapter.

“(b) REPORTS.—(1) Not later than 18 months after the Secretary prescribes the regulations required by subsection (a), and annually thereafter for the next 10 years, the Secretary shall submit to the Committees on Veterans' Affairs of

the Senate and House of Representatives a report on the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

“(2) Each report under this subsection shall include the following:

“(A) A description of the rates of pay in effect during the preceding fiscal year with a comparison to the rates in effect during the fiscal year preceding fiscal year, set forth by facility and by specialty.

“(B) The number of physicians and dentists who left the Veterans Health Administration during the preceding fiscal year.

“(C) The number of unfilled physician positions and dentist positions in each specialty in the Veterans Health Administration, the average and maximum lengths of time that such positions have been unfilled, and an assessment of the reasons that such positions remain unfilled.

“(D) An assessment of the impact of implementation of this subchapter on efforts to recruit and retain physicians and dentists in the Veterans Health Administration.

“(3) The first two annual reports under this subsection shall also include a comparison of staffing levels, contract expenditures, and average salaries of physicians and dentists in the Veterans Health Administration for the fiscal year preceding such report and for the fiscal year preceding such fiscal year, set forth by facility and by specialty.”

(c) INITIAL RATES OF BASE PAY FOR PHYSICIANS AND DENTISTS.—The initial rates of base pay established for the base pay steps under the Physician and Dentist Base and Longevity Pay Schedule provided in section 7431(b) of title 38, United States Code (as added by subsection (b)), are as follows:

Base Pay Step:	Rate of Pay:
1 .....	\$90,000
2 .....	\$93,000
3 .....	\$96,000
4 .....	\$99,000
5 .....	\$102,000
6 .....	\$105,000
7 .....	\$108,000
8 .....	\$111,000
9 .....	\$114,000
10 .....	\$117,000
11 .....	\$120,000
12 .....	\$123,000
13 .....	\$127,000
14 .....	\$130,000
15 .....	\$133,000.

(d) TRANSITION PROVISIONS.—

(1) PHYSICIANS AND DENTISTS.—

(A) PAY.—(i) A physician or dentist in receipt of pay under section 7404 or 7405 of title 38, United States Code, as of the day before the date of the enactment of this Act shall continue to receive pay under such section (as in effect on the day before the date of the enactment of this Act) until the effective date of this Act under section 8 of this Act.

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

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

(ii) A physician or dentist described in subparagraph (A)(ii) may be paid special pay under applicable provisions of section 7433, 7434, 7435, or 7436 of title 38, United States Code (as in ef-

fect on the day before the date of the enactment of this Act), during the period beginning on the date of appointment or reassignment of such physician or dentist, as the case may be, and ending on the effective date of this Act. However, no special pay agreement shall be required for the payment of special pay under this clause.

(C) TREATMENT OF SPECIAL PAY.—(i) Special pay paid under subparagraph (B) shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act).

(ii) Special pay paid under subparagraph (B) shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

(D) PRESERVATION OF PAY.—The amount of pay paid under subchapter III of chapter 74 of title 38, United States Code (as amended by subsection (a)), to a physician or dentist appointed or reassigned before the effective date of this Act may be not less than the aggregate amount of pay and special pay paid to the physician or dentist under chapter 74 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), as of the day before the effective date of this Act.

(2) UNDER SECRETARY FOR HEALTH.—

(A) SPECIAL PAY.—(i) The current special pay agreement entered into by the Under Secretary for Health under subchapter III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act shall terminate on the date of the enactment of this Act. However, the Under Secretary shall continue to receive special pay under the terms of such agreement until the effective date of this Act.

(ii) An individual appointed as Under Secretary for Health on or after the date of the enactment of this Act and before the effective date of this Act shall be paid special pay in accordance with the provisions of section 7432(d)(2), 7433, and 7437(a) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of appointment and ending on the effective date of this Act. However, no special pay agreement shall be required for the payment of special pay under this clause.

(B) TREATMENT OF SPECIAL PAY.—Special pay paid under subparagraph (A) shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

(e) CONFORMING AMENDMENT.—Section 7404(c) is amended by striking “special pay” and inserting “pay”.

(f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 74 is amended by striking the items relating to subchapter III and inserting the following new items:

“SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS

“Sec. 7431. Pay.

“Sec. 7432. Pay of Under Secretary for Health.

“Sec. 7433. Administrative matters.”

#### SEC. 4. ALTERNATE WORK SCHEDULES FOR REGISTERED NURSES.

(a) IN GENERAL.—(1) Chapter 74 is amended by inserting after section 7456 the following new section:

##### “§ 7456A. Nurses: alternate work schedules

“(a) APPLICABILITY.—This section applies to registered nurses appointed under this chapter.

“(b) 36/40 WORK SCHEDULE.—(1) Subject to paragraph (2), if the Secretary determines it be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work three regularly scheduled 12-hour tours of duty within a work-week shall be considered for all purposes (except computation of full-time equivalent employees for the purposes of determining compliance with

personnel ceilings) to have worked a full 40-hour basic workweek.

“(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) to have worked a full 40-hour basic workweek shall be subject to subparagraphs (B) and (C).”

“(B) The hourly rate of basic pay for a nurse covered by this paragraph for service performed as part of a regularly scheduled 36-hour tour of duty within the workweek shall be derived by dividing the nurse's annual rate of basic pay by 1,872.

“(C)(i) A nurse covered by this paragraph is entitled to overtime pay for work performed in such periods as the Secretary shall prescribe.

“(ii) Except as otherwise provided in clause (i), a nurse covered by this paragraph is not entitled to additional pay under section 7453 of this title, or other applicable law, for any period included in a regularly scheduled 12-hour tour of duty.

“(3) A nurse who works a work schedule described in this subsection who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of ten hours of leave for every nine hours of absence.

“(4) A nurse working a work schedule under this subsection shall be eligible for holiday pay under section 7453(d) of this title for any service performed by the nurse on a designated holiday under such section, regardless of whether such holiday occurs during or outside the nurse's regularly scheduled tour of duty under such work schedule.

“(c) 9-MONTH WORK SCHEDULE FOR CERTAIN NURSES.—(1) The Secretary may authorize a registered nurse appointed under section 7405 of this title, with the nurse's written consent, to work fulltime for nine months with 3 months off duty, within a fiscal year, and be paid at 75 percent of the fulltime rate for such nurse's grade for each pay period of such fiscal year.

“(2) A nurse who works under the authority in paragraph (1) shall be considered a 0.75 fulltime equivalent employee in computing fulltime equivalent employees for the purposes of determining compliance with personnel ceilings.

“(3) Work under this subsection shall be considered parttime service for purposes of computing benefits under chapters 83 and 84 of title 5.

“(4) A nurse who works under the authority in paragraph (1) shall be considered a fulltime employee for purposes of chapter 89 of title 5.

“(d) TREATMENT AS FULL-TIME EMPLOYEE.—(1) A nurse working a work schedule under subsection (b) or (c) who is a full-time employee in non-probationary status at the commencement of work under such work schedule shall remain a full-time employee in non-probationary status while working under such work schedule.

“(2)(A) A nurse under a part-time appointment under section 7405(d) of this title who, while working a work schedule under subsection (b) or (c), performs hours of service (as determined in accordance with such subsection) equivalent to two years of service shall be treated as a full-time employee and no longer in probationary status.

“(B) In determining the hours of service performed by a nurse for purposes of subparagraph (A), any hours of service not performed under a work schedule under subsection (b) or (c) shall not be included.

“(e) NOTIFICATION OF MODIFICATION OF BENEFITS.—The Secretary shall provide each nurse with respect to whom an alternate work schedule under this section may apply written notice of the effect, if any, the alternate work schedule will have on the nurse's health care premium, retirement, life insurance premium, probationary status, or other benefit or condition of employment. The notice shall be provided not later than 14 days before the nurse consents to the alternate work schedule.

“(f) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.”.

(2) The table of sections at the beginning of chapter 74 is amended by inserting after the item relating to section 7456 the following new item: “Sec. 7456A. Nurses: alternate work schedules.”.

(b) POLICY AGAINST WORK SHIFTS IN EXCESS OF 12 HOURS.—(1) It is the sense of Congress to encourage the Secretary of Veterans Affairs to prevent work shifts by nurses providing direct patient care in excess of 12 hours in any 24 hour period.

(2) Not later than one year after the date of the enactment of this Act and every year thereafter for the next two years, the Secretary shall certify to Congress whether or not each Veterans Health Administration facility has in place, as of the date of such certification, a policy designed to prevent work shifts by nurses providing direct patient care in excess of 12 hours in any 24 hour period.

(c) REPORT ON OVERTIME FOR CERTAIN NURSES.—(1) Not later than one year after the effective date of this Act, the Secretary of Veterans Affairs shall submit to Congress a report on the overtime, if any, worked by nurses covered by work schedules described by subsections (b) and (c) of section 7456A of title 38, United States Code (as added by subsection (a)), during the one-year period ending on the date of such report.

(2) The report shall set forth—

(A) the aggregate number of hours of overtime worked by nurses under each such work schedule during the one-year period ending on the date of the report; and

(B) the aggregate amount of overtime pay paid to nurses working under each such work schedule during such period.

#### SEC. 5. RATE OF PAY FOR DIRECTOR OF NURSING SERVICE.

(a) SENIOR EXECUTIVE SERVICE ES-6 RATE.—(1) Subchapter IV of chapter 74 is amended by adding at the end the following new section:

##### “§7459. Director of Nursing Service: rate of pay

“(a) SENIOR EXECUTIVE SERVICE ES-6 RATE.—The rate of pay for the Director of Nursing Service shall be equal to the sum of the maximum rate of basic pay established for the Senior Executive Service under section 5382 of title 5 and the amount of the locality-based comparability payment provided under section 5304 of such title for the Director's locality.

“(b) INAPPLICABILITY OF NURSE PAY PROVISION.—Section 7451 of this title does not apply to the Director of Nursing Service.”.

(2) The table of sections at the beginning of chapter 74 is amended by inserting after the item relating to section 7458 the following new item: “Sec. 7459. Director of Nursing Service: rate of pay.”.

(b) CONFORMING AMENDMENT.—Section 7404(d) is amended by striking “section 7457” and inserting “sections 7457 and 7459”.

#### SEC. 6. NURSE EXECUTIVE SPECIAL PAY.

Section 7452 is amended by adding at the end the following new subsection:

“(g)(1) In order to recruit and retain highly qualified Department nurse executives, the Secretary may, in accordance with regulations prescribed by the Secretary, pay special pay to the nurse executive at each location as follows:

“(A) Each Department healthcare facility.

“(B) The Central Office.

“(2) The amount of special pay paid to a nurse executive under paragraph (1) shall be not less than \$10,000 or more than \$25,000.

“(3) The amount of special pay paid to a nurse executive under paragraph (1) shall be based on factors such as the grade of the nurse executive position, the scope and complexity of the nurse executive position, the personal qualifications of the nurse executive, the characteristics of the healthcare facility concerned, the nature and number of specialty care units at the healthcare facility concerned, demonstrated dif-

ficulties in recruitment and retention of nurse executives at the healthcare facility concerned, and such other factors as the Secretary considers appropriate.

“(4) Special pay paid to a nurse executive under paragraph (1) shall be in addition to any other pay (including basic pay) and allowances to which the nurse executive is entitled, and shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits, but shall not be considered basic pay for purposes of adverse actions under subchapter V.”.

#### SEC. 7. CLARIFICATION OF DISCRETIONARY NATURE OF VETERANS HEALTH ADMINISTRATION PERSONNEL ADMINISTRATION AUTHORITIES.

(a) IN GENERAL.—Chapter 74 is amended by inserting after section 7426 the following new section:

##### “§7427. Discretionary nature of functions

“Any authority assigned to the Secretary or another officer of the Department under this chapter shall be carried out at the discretion of the Secretary or other officer, as the case may be.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 74 is amended by inserting after the item relating to section 7426 the following new item:

“7427. Discretionary nature of functions.”.

#### SEC. 8. EFFECTIVE DATE.

The amendments to title 38, United States Code, made by this Act shall take effect one year after the date of the enactment of this Act.

Mr. SPECTER. Mr. President, I seek recognition today to ask for Senate approval of a manager's amendment to S. 2484, the proposed “Department of Veterans Affairs Personnel Enhancement Act of 2004,” and to ask for Senate approval of the bill as so amended. This amendment was developed in consultation with, and it has been approved by, the ranking member of the Senate Veterans' Affairs Committee, Senator BOB GRAHAM.

I introduced S. 2484 on June 1, 2004 at the request of the administration. That bill, in the form I introduced it, and as it was amended prior to its approval by the Senate Committee on Veterans' Affairs on July 20, 2004, is already explained in Senate Report 108-357. Accordingly, I will not detail provisions of the bill that are already explained in the Committee Report. Rather, I will confine this explanation to highlighting how the bill as now further amended—the “Manager's bill”—would modify the reported bill.

Section 3 of the reported bill makes changes in the system used by the Department of Veterans Affairs—VA—to compensate its physicians and dentists. The managers' bill contains many changes to this section. Some are primarily technical in nature and are designed to assure that the language of the bill actually accomplishes its intended purpose. These changes would, among other things, clarify how VA physicians' and dentists' retirement credits will be computed during the transition from the current to the new pay system; assure that statutory language requiring comparability pay increases is consistent with language in other Federal pay system statutes; and specify that physicians and dentists who work in VA headquarters will also



be eligible for pay under the new pay system.

Other changes made to section 3 of the reported bill are more substantive. Almost entirely, they respond to comments that were made on the reported bill by VA officials, by VA employee representatives, by physician and dentist professional organizations, and by the staffs of interested Senators, and by the staff of the House of Representatives' Committee on Veterans' Affairs. First, there are two changes that would foster more public awareness of, and input on, decisions made by VA that would affect the pay of physicians and dentists. One change would require that the VA Secretary publish in the Federal Register any updates in the national "pay bands" he or she might establish under authority of this legislation; another would require VA's Under Secretary for Health to solicit the views of exclusive employee representatives and physicians' and dentists' professional organizations before making recommendations to the Secretary on "pay band" modifications or other regulatory changes.

Second, the Managers' bill would modify the reported bill's requirement that VA consult local Medical Professional Standards Boards—PSBs—prior to making decisions concerning the pay of physicians or dentists. It would only be required that an appropriate panel of physicians or dentists, as applicable, be consulted since not all VA facilities have an appropriate PSB in place. The managers' bill would also excise references to the required size of the board.

Third, the Managers' bill would require VA to provide a physician or dentist written notice of decisions made by VA concerning his or her "market-based" pay. Under the reported bill, such notification was only required in the event a physician's or dentist's pay were to increase.

Fourth, the Managers' bill would create an exception to the general rule contained in the reported bill that a physician's or dentist's pay may not be reduced during his or her tenure with VA. The managers' amendment would permit VA to change pay—and reduce pay—if a physician or dentist changes his or her assignment within a medical facility or moves from one VA facility to another. For example, if VA were to hire a cardiologist at the prevailing market salary for a practicing cardiologist, but that physician later becomes a VA primary care physician, VA would be allowed to adjust his or her pay to the primary care physician level. Similarly, if a physician is hired in Manhattan at a Manhattan salary and later transfers to the Des Moines VA Medical Center, VA would be allowed to adjust his or her pay to Des Moines market rates. In cases where the move or change in assignment is involuntary due, for example, to disciplinary action, VA would be required to afford the employee an opportunity to appeal.

Fifth, the reported bill included a provision which would have allowed VA to award "incentive pay" of up to \$10,000 to physicians or dentists in recognition of outstanding contributions to the facility, to the care of veterans, or to the practice of medicine or dentistry. It was suggested that these standards were too general. In response, the managers' bill specifies that such pay—renamed "performance pay"—would be awarded on the basis of the physician's or dentist's achievement of specific goals or objectives as revealed by the Secretary in advance. Additionally, the managers' bill would raise the amount payable as "performance pay" to \$15,000 annually or 7.5 percent of the sum of a physician's or dentist's base and market pay, whichever is lower. Inasmuch as the achievement of "performance pay" objectives are intended to be encouraged only by the "positive reinforcement" of a prospective bonus, the managers' bill would prohibit VA from taking disciplinary actions against physicians or dentists for failing to meet goals outlined under this program.

Finally, the managers' bill, at VA's request, would make all of the changes to the VA physician and dentist compensation system effective the first pay period following January 1, 2006.

Section 4 of the reported bill authorizes alternate work schedules for VA nurses. The managers' bill makes a number of technical changes, and two substantive changes. On the technical side, the managers' bill, for example, clarifies the full-time vs. part-time status of nurses working alternate schedules and specifies a requirement that VA provide notice to employees whose benefits might change under a new work schedule. Substantively, one modification would require that VA pay overtime to nurses on a 36/40 schedule in three instances: when work over 12 hours in one day is performed; when more than 40 hours are worked in an administrative work week; and when more than 8 hours are worked on a day not originally scheduled for a 12-hour shift. Each of these over-time scenarios is consistent with current practice; the change is made purely to ensure maintenance of the status quo. A second substantive change would express the Sense of the Congress that VA should prevent work hours by nurses in excess of 12 consecutive hours or over 60 hours in any seven-day period, and require VA to certify to Congress that each VA facility has policies in place designed to prevent nurses from working more than these tours of duty. The patient safety-related reasons for these requirements are explained in Senate Report 108-357.

Section 5 of the reported bill would have provided a pay increase for the Director of Nursing Services in VA's Central Office. Due to disagreements concerning the implementation of this section of the bill, action on this proposed pay increase is deferred.

The substance of Section 6 of the reported bill is unchanged. It is merely

renumbered in light of the removal of section 5.

Section 7 of the reported bill would have clarified VA authority with respect to certain personnel decisions. This provision, requested by VA as a purely technical "clarification" of existing law, was subject to much discussion and debate among VA officials, Committee staff, and employee representatives. It was taken by employee representatives to be a "stealth attempt" by VA to circumvent current collective bargaining agreements. The Committee does not ascribe such motives to VA, but it has withdrawn this provision from the managers' bill.

Section 8 of the reported bill specified that all provisions of the bill would have been effective one year following the date of enactment. Section 3 of the managers' bill changes the effective date applicable to that provision to the first pay period following January 1, 2006. The other provisions of the managers' bill would now take effect upon enactment of the managers' bill.

This legislation is the product of almost unprecedented open negotiation with very senior VA officials, unions representing Government employees, professional representatives of VA physicians and dentists, and other interested persons. This unprecedented "sunshine" has resulted, I think, in an exceptional bill. But for the extraordinary efforts of VA, union, and professional organization officials to resolve their differences in good faith, this improved managers' bill could not have emerged. They and the Congressional staff are to be complimented. But the efforts of one person—Mr. William T. Cahill, the Veterans Affairs Committee's Health Policy Counsel—deserve to be singled out for recognition. But for his steadfast and determined efforts to push this project through numerous impasses that had impeded its development, we would not have gotten to this day.

Mr. GRAHAM. Mr. President, I rise today to urge swift passage of S. 2484, which reflects a compromise agreement on a new system for compensating physicians and dentists in the Department of Veterans Affairs' VA health care system, as well as alternative work schedules for VA nurses. VA doctors and dentists have not gotten a pay adjustment in over a decade. All of these measures are aimed at improving VA's ability to recruit and retain quality health care professionals. I would like to highlight some of the key aspects of this legislation.

The compromise agreement sets forth a three-tiered system for paying VA physicians and dentists. The three tiers consist of base, market, and performance pay. The base pay element is similar to that employed by other Federal agencies, also known as the General Schedule GS—system. As such, increases are guaranteed for every 2 years a physician or dentist remains employed by VA.

The second component of the new pay system is market pay. This element will be implemented by the Secretary in the form of pay bands that will be determined by surveys of regional salaries in the academic and private sectors. Also relevant to the market pay determinations are factors such as the scarcity—or abundance—of certain specialty physicians, type and years of experience, and board certifications. Finally, the Secretary will consult with professional review panels composed of other physicians or dentists.

The final component is performance pay. Performance pay will be awarded to doctors and dentists if they meet certain goals and measures set forth by the Secretary. Currently, VA has extensive performance measures that it utilizes to motivate its health care providers and ensure quality of care. This element has a maximum of \$15,000 or 7.5 percent of the sum of the base and market pay.

One other major section of this agreement establishes alternative work schedules for VA nurses. It is widely known that the entire country is suffering from a nursing shortage. VA anticipates that it will be hit especially hard by the retirement of a significant portion of its nursing workforce over the next 10 years. S. 2484 allows VA to employ different types of working schedules in order to attract more nurses to the system.

I am proud to have worked on this valuable piece of legislation for our Nation's veterans.

Mr. FRIST. I ask unanimous consent the substitute amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the amendment to the title be agreed to, the motions to reconsider be laid on the table en bloc, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (2973) was agreed to. (The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The bill (S. 2484), as amended, was passed.

The title was amended so as to read:

"An Act to amend title 38, United States Code, to simplify and improve pay provisions for physicians and dentists and to authorize alternate work schedules and executive pay for nurses, and for other purposes."

#### ORDERS FOR WEDNESDAY, OCTOBER 6, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, October 6. I further ask that following the prayer and pledge, the morning hour be

deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and there then be a period of morning business for up to 30 minutes, with the first half under the control of the majority leader and the second half under the control of the minority leader; further, that the Senate then resume consideration of S. 2845, the intelligence reform bill, as provided under the previous order; provided further that the debate prior to 11:30 be equally divided between the two managers, and that 15 minutes of that time be under the control of Senators WARNER and LEVIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Mr. FRIST. Mr. President, tomorrow morning the Senate will continue debate on the intelligence reform bill. Under a previous order, at 11:30 a.m. there will be a series of stacked votes on amendments to the bill. Following those votes, the Senate will continue working through the remaining amendments to the bill, and Senators should expect votes throughout the day.

I remind my colleagues that postcloture debate will expire late tomorrow afternoon. If we use all the remaining time, Senators should expect a stacked series of votes which will include any remaining pending amendments and final passage. It is my hope that we will not use all postcloture debate time.

In addition, I encourage Members to work together to dispose of as many amendments as possible in order to avoid a "mini vote-arama." Tomorrow will be a very busy day. I ask all Senators to plan accordingly.

#### ORDER FOR ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order, following the remarks of Senator TALENT.

#### THANKING SENATORS

Mr. FRIST. Mr. President, shortly I will go into a quorum call while we wait a few minutes for Senator TALENT, but let me thank my colleagues on both sides of the aisle. We have had a very productive day, a very productive week. We set out with an objective several weeks ago of completing this very important intelligence reform bill. With the cooperation of all of our colleagues, we will complete this bill tomorrow.

Following completion of that bill, we will proceed to our internal Senate oversight reforms, and look forward to hopefully addressing that late tomorrow afternoon.

There are a number of other issues we laid out in the course of the day

that are underway, including the FSC/ETI jobs manufacturing bill and the Homeland Security Appropriations bill. So we have a lot of work to do in a short period of time during the remainder of this week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TALENT. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ILLUMINATION OF THE GATEWAY ARCH IN ST. LOUIS

Mr. TALENT. Mr. President, I rise tonight in support of legislation which I have sponsored along with Senator BOND that would authorize the Secretary of the Interior to illuminate the gateway arch with pink lighting in honor of Breast Cancer Awareness Month. I want to say how much I appreciate the cooperation from both sides of the aisle on this important measure so that we can get it done and passed in time to honor those who have struggled against this disease during that month which has been set aside to recognize what they have done.

It is amazing how many American families have been touched by this disease. Speaking personally, my mother fought and eventually lost the battle against breast cancer. Her struggle certainly had a profound impact on me and on my family.

Currently, breast cancer is the second leading cause of cancer deaths for women in the United States. Approximately 40,000 women in this country will die from the disease in 2004, and the American Cancer Society estimates that a woman in the United States has a 1 in 7 chance of developing invasive breast cancer during her lifetime, and this risk was 1 in 11 in 1975.

For the past 20 years, October has been designated as Breast Cancer Awareness Month. Events around the world are dedicated to spreading the message of early detection so that prevention and the ongoing search for a cure can continue. Throughout the month, women are reminded in many ways that regular screening for breast cancer continues to be the most effective way to detect this disease in its earliest stages and therefore save lives.

Recently, I was contacted by a group of Missourians who wanted to highlight the need for breast cancer awareness. They wanted to illuminate the arch, which is, of course, a landmark not only in Missouri but in the country—a landmark with both national and local significance. They wanted to illuminate it with pink lighting in order to commemorate Breast Cancer Awareness Month. People everywhere associate the pink ribbon and the color pink as a symbol of breast cancer