

the Department, as calculated over the five-year period preceding the determination.

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

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

Editorial Notes

AMENDMENTS

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

2016—Subsec. (b). Pub. L. 114-315 substituted “under subsection (a)” for “under paragraph (1)”.

Statutory Notes and Related Subsidiaries

DEADLINE FOR FIRST DETERMINATION

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

§ 7413. Treatment of podiatrists; clinical oversight standards

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

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

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

Editorial Notes

CODIFICATION

Section 502(a)(1) of Pub. L. 115-182, which directed that this section be added at the end of subchapter I of

chapter 74, without specifying the Code title to be amended, was executed by adding this section at the end of this subchapter, to reflect the probable intent of Congress.

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

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

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

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

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

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

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

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

(2) The Secretary shall—

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

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

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

(4) If a covered health care professional does not hold an active Drug Enforcement Administration registration, the Secretary shall carry out any of the following actions, as the Secretary determines appropriate:

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

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

(C) Take appropriate actions under subchapter V of this chapter, with respect to an employee of the Department, or take appro-

appropriate contract administration actions, with respect to a contractor of the Department.

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

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

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

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

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

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

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

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

(2) The Drug Enforcement Administration.

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

(4) Any other relevant entity.

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

(2) Nothing in paragraph (1) limits—

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

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

(f) **TRAINING.**—Not less frequently than annually, the Secretary shall provide mandatory training on the following duties to employees of

the Department who are responsible for performing such duties:

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

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

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

(4) Making notifications under subsection (d).

(g) **DEFINITIONS.**—In this section:

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

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

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

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

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

Editorial Notes

REFERENCES IN TEXT

The Health Care Quality Improvement Act of 1986, referred to in subsec. (d)(3), is title IV of Pub. L. 99-660, Nov. 14, 1986, 100 Stat. 3784, which is classified generally to chapter 117 (§1101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of Title 42 and Tables.

Statutory Notes and Related Subsidiaries

DEADLINE FOR IMPLEMENTATION

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

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

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

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

AUDITS AND REPORTS

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

“(1) AUDITS.—

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

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

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

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

“(2) REPORTS.—

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

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

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

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

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

SUBCHAPTER II—COLLECTIVE BARGAINING AND PERSONNEL ADMINISTRATION

§ 7421. Personnel administration: in general

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

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

- (1) Physicians.
- (2) Dentists.
- (3) Podiatrists.
- (4) Optometrists.
- (5) Registered nurses.
- (6) Physician assistants.
- (7) Expanded-duty dental auxiliaries.
- (8) Chiropractors.

(9) Any position for which the employee is appointed under section 7306 or 7401(4) of this title.

(Added Pub. L. 102-40, title II, § 202, May 7, 1991, 105 Stat. 200; amended Pub. L. 108-170, title III, § 302(g), Dec. 6, 2003, 117 Stat. 2058; Pub. L.

117-168, title IX, § 906(c)(1), Aug. 10, 2022, 136 Stat. 1812.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4108(a) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

TREATMENT OF PRIOR LEAVE BALANCES

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

PRESERVATION OF EXISTING COLLECTIVE-BARGAINING ARRANGEMENTS AND PENDING ACTIONS

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

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

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

§ 7422. Collective bargaining

(a) Except as otherwise specifically provided in this title, the authority of the Secretary to prescribe regulations under section 7421 of this title is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5 (relating to labor-management relations).