

# Union Calendar No. 312

108TH CONGRESS  
2D SESSION

# H. R. 4231

[Report No. 108-538]

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2004

Mr. SIMMONS introduced the following bill; which was referred to the Committee on Veterans' Affairs

JUNE 9, 2004

Additional sponsors: Mr. SMITH of New Jersey and Mr. BILIRAKIS

JUNE 9, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on April 28, 2004]

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## A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Department of Veterans*  
3 *Affairs Nurse Recruitment and Retention Act of 2004”.*

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

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

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

23 *(b) PRIVATE-SECTOR RECRUITMENT PRACTICES.—For*  
24 *purposes of the pilot program under this section, the Sec-*  
25 *retary shall identify and use recruitment practices that*  
26 *have proven effective for placing qualified individuals in*

1 *positions that are difficult to fill due to shortages of quali-*  
2 *fied individuals or other factors. Recruitment practices to*  
3 *be reviewed by the Secretary for use in the pilot program*  
4 *shall include—*

5           (1) *employer branding and interactive adver-*  
6 *tising strategies;*

7           (2) *Internet technologies and automated staffing*  
8 *systems; and*

9           (3) *the use of recruitment, advertising, and com-*  
10 *munication agencies.*

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

23       (d) *REPORT.—Not later than one year after the date*  
24 *of the enactment of this Act, the Secretary shall submit to*  
25 *the Committees on Veterans' Affairs of the Senate and*

1 *House of Representatives a report on the extent to which*  
2 *the pilot program achieved the goal of improving the re-*  
3 *cruitment and retention of nurses in Department of Vet-*  
4 *erans Affairs health-care facilities.*

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

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

9 **“§ 7456a. Alternate work schedules**

10       “(a) *APPLICABILITY.*—This section applies to reg-  
11 istered nurses appointed under this chapter.

12       “(b) *36/40 WORK SCHEDULE.*—(1) Subject to para-  
13 graph (2), if the Secretary determines it to be necessary  
14 in order to obtain or retain the services of registered nurses  
15 at a Department health-care facility, the Secretary may  
16 provide, in the case of registered nurses employed at that  
17 facility, that such a nurse who works three regularly sched-  
18 uled 12-hour tours of duty within a workweek shall be con-  
19 sidered for all purposes (except computation of full-time  
20 equivalent employees for the purposes of determining com-  
21 pliance with personnel ceilings) to have worked a full 40-  
22 hour basic workweek. Such a schedule may be referred to  
23 as a ‘36/40 work schedule’.

24       “(2)(A) *Basic and additional pay for a registered*  
25 *nurse who is considered under paragraph (1) to have*

1 *worked a full 40-hour basic workweek is subject to subpara-*  
2 *graphs (B) and (C).*

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

7       *“(C)(i) Such a nurse who performs a period of service*  
8 *in excess of such nurse’s regularly scheduled 36-hour tour*  
9 *of duty within a workweek is entitled to overtime pay under*  
10 *section 7453(e) of this title, or other applicable law, for offi-*  
11 *cially ordered or approved service performed in excess of—*

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

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

17             *“(III) 40 hours during an administrative work-*  
18             *week.*

19       *“(ii) Except as provided in clause (i), a registered*  
20 *nurse to whom this subsection is applicable is not entitled*  
21 *to additional pay under section 7453 of this title, or other*  
22 *applicable law, for any period included in a regularly*  
23 *scheduled 12-hour tour of duty.*

24       *“(3) A nurse who works a 36/40 work schedule de-*  
25 *scribed in this subsection who is absent on approved sick*

1 *leave or annual leave during a regularly scheduled 12-hour*  
2 *tour of duty shall be charged for such leave at a rate of*  
3 *ten hours of leave for nine hours of absence.*

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

16       “(2)(A) *Basic and additional pay for a registered*  
17 *nurse who is considered under paragraph (1) to have*  
18 *worked a full 80-hour pay period is subject to subpara-*  
19 *graphs (B) and (C).*

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

24       “(C)(i) *Such a nurse who performs a period of service*  
25 *in excess of such nurse’s regularly scheduled 70-hour tour*

1 of duty within a pay period is entitled to overtime pay  
2 under section 7453(e) of this title, or other applicable law,  
3 for officially ordered or approved service performed in ex-  
4 cess of—

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

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

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

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

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

21           “(d) 9-MONTH WORK SCHEDULE.—The Secretary  
22           may authorize a registered nurse appointed under section  
23           7405 of this title, with the nurse’s written consent, to work  
24           full-time for nine months with three months off duty, within  
25           a fiscal year, and be paid at 75 percent of the full-time

1 rate for such nurse's grade for each pay period of that fiscal  
2 year. A nurse working on such a schedule for any fiscal  
3 year shall be considered a <sup>3</sup>/<sub>4</sub> full-time equivalent employee  
4 for that fiscal year in computing full-time equivalent em-  
5 ployees for the purposes of determining compliance with  
6 personnel ceilings. Service on such a schedule shall be con-  
7 sidered to be part-time service for purposes of computing  
8 benefits under chapters 83 and 84 of title 5.

9       “(e) *REGULATIONS.*—The Secretary shall prescribe  
10 regulations for the implementation of this section.”.

11       “(b) *CLERICAL AMENDMENT.*—The table of sections at  
12 the beginning of chapter 74 of such title is amended by in-  
13 serting after the item relating to section 7456 the following  
14 new item:

“7456a. *Alternate work schedules.*”.

15 **SEC. 4. APPOINTMENT OF NURSES WHO DO NOT HAVE BAC-**  
16 **CALAUREATE DEGREES.**

17       Section 7403 of title 38, United States Code, is amend-  
18 ed by adding at the end the following new subsection:

19       “(h) *In a case in which a registered nurse applying*  
20 *for an appointment under this chapter as a registered nurse*  
21 *has presented the qualifications established under subsection*  
22 *(a) for such an appointment, the lack of a baccalaureate*  
23 *degree in nursing shall not be a bar to appointment, and*  
24 *in such a case the registered nurse shall not be denied ap-*  
25 *pointment on that basis.*”.

1 **SEC. 5. TECHNICAL CORRECTION TO LISTING OF CERTAIN**  
2 **HYBRID POSITIONS IN VETERANS HEALTH**  
3 **ADMINISTRATION.**

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

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

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

14 **SEC. 6. ASSISTANCE FOR HIRING AND RETENTION OF**  
15 **NURSES AT STATE VETERANS HOMES.**

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

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

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

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

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

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

5           “(2) has in effect an employee incentive scholar-  
6 ship program or other employee incentive program at  
7 a State home designed to promote the hiring and re-  
8 tention of nursing staff and to reduce nursing short-  
9 ages at that home.

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

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

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

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

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

11 “(f) *SOURCE OF FUNDS.*—Payments under this section  
12 shall be made from funds available for other payments  
13 under this subchapter.

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

18 “(h) *USE OF CERTAIN RECEIPTS.*—The Secretary  
19 shall require as a condition of any payment under this sec-  
20 tion that, in any case in which the State home receives a  
21 refund payment made by an employee in breach of the  
22 terms of an agreement for employee assistance that used  
23 funds provided under this section, the payment shall be re-  
24 turned to the State home’s incentive program account and  
25 credited as a non-Federal funding source.

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

15       “(j) *REGULATIONS.*—*The Secretary shall prescribe reg-*  
 16 *ulations to carry out this section. The regulations shall in-*  
 17 *clude the establishment of criteria for the award of pay-*  
 18 *ments under this section.”.*

19       (2) *The table of sections at the beginning of such chap-*  
 20 *ter is amended by inserting after section 1743 the following*  
 21 *new item:*

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

22       (b) *IMPLEMENTATION.*—*The Secretary of Veterans Af-*  
 23 *fairs shall implement section 1744 of title 38, United States*  
 24 *Code, as added by subsection (a), as expeditiously as pos-*  
 25 *sible. The Secretary shall establish such interim procedures*

1 *as necessary so as to ensure that payments are made to*  
2 *eligible States under that section commencing not later than*  
3 *January 1, 2005, notwithstanding that regulations under*  
4 *subsection (j) of that section may not have become final.*

5 **SEC. 7. TECHNICAL CLARIFICATION.**

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

10 **SEC. 8. UNDER SECRETARY FOR HEALTH.**

11 *Section 305(a)(2) of title 38, United States Code, is*  
12 *amended—*

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

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

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