

108TH CONGRESS
2D SESSION

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.

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2004

Mr. SPECTER (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans Affairs

A BILL

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.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Vet-
5 erans Affairs Health Care Personnel Enhancement Act of
6 2003”.

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

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

7 **SEC. 3. IMPROVEMENT AND SIMPLIFICATION OF PAY PRO-**
 8 **VISIONS FOR PHYSICIANS AND DENTISTS.**

9 (a) Chapter 74 is amended—

10 (1) In section 7404b—

11 (A) by striking “(1)” after “(b)”;

12 (B) by striking the list of position grades
 13 under the caption, “PHYSICIAN AND DENTIST
 14 SCHEDULE” and inserting in lieu thereof the
 15 following:

16 “Physician grade.

17 Dentist grade.”; and

18 (C) by striking paragraph (2) in its en-
 19 tirety;

20 (2) In section 7404(c) by striking “special”;

21 and

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

1 “SUBCHAPTER III—PAY FOR PHYSICIANS AND
2 DENTISTS

3 **“§ 7431. Pay authority**

4 “(a) In order to recruit and retain highly qualified
5 physicians and dentists in the Veterans Health Adminis-
6 tration, the Secretary shall establish and periodically ad-
7 just the rates of pay for physicians and dentists based
8 upon the factors specified in subsection (b). Total pay
9 shall be benchmarked to representative salaries of non-De-
10 partment physicians, dentists, and health care clinician-
11 executives.

12 “(b) Pay for physicians and dentists employed in the
13 Veterans Health Administration shall have three compo-
14 nents:

15 “(1) BASE PAY.—This shall be a uniform pay
16 band applicable nationwide. The minimum rate shall
17 be the maximum rate for Chief grade in the Vet-
18 erans Health Administration Physician and Dentist
19 Pay Schedule in effect on the day before the date
20 of enactment of this Act. The maximum rate may
21 not exceed the rate of basic pay authorized by sec-
22 tion 5316 of title 5 for Level V of the Executive
23 Schedule. The Secretary shall adjust annually the
24 minimum rate by the same percentage as the adjust-
25 ment under section 5303 of title 5 in the rates of

1 pay for the General Schedule, and the maximum
2 rate in accordance with section 5318 of title 5. Ad-
3 ministration facilities, under regulations prescribed
4 by the Secretary, may set individual base pay any-
5 where within the pay band.

6 “(2) MARKET PAY.—This shall be a variable
7 pay band based on geographic area, specialty, as-
8 signment, personal qualifications, and individual ex-
9 perience, and shall be established and adjusted lo-
10 cally in accordance with regulations prescribed under
11 subsection (c). Administration facilities will set indi-
12 vidual market pay in accordance with regulations
13 prescribed by the Secretary. The Under Secretary
14 for Health shall periodically review and recommend
15 to the Secretary adjustments to the market pay
16 band based on published healthcare workforce em-
17 ployment and compensation data. The Secretary
18 may adjust the market pay band periodically based
19 on the recommendations of the Under Secretary and
20 in response to changing health-care labor trends.

21 “(3) PERFORMANCE PAY.—

22 “(A) There shall be a variable pay band
23 linked to the physician’s or dentist’s achieve-
24 ment of specific corporate goals and individual
25 performance objectives. Physicians and dentists

1 other than those specified in subsection (f)(1)
2 shall not be eligible for this component during
3 the first year of appointment. The amount pay-
4 able to a physician or dentist for this compo-
5 nent may vary based on individual achievement.
6 The performance component paid to any physi-
7 cian or dentist other than those specified in
8 subsection (f)(1) will be in accordance with reg-
9 ulations prescribed by the Secretary and may
10 not exceed \$10,000 in a year.

11 “(B) In accordance with regulations pre-
12 scribed by the Secretary, ten percent of the
13 benchmark total pay for physicians and dentists
14 specified in subsection (f)(1) shall be linked to
15 the physician’s or dentist’s achievement of spe-
16 cific corporate goals and individual performance
17 objectives as a performance component. Admin-
18 istration facilities may set the performance pay
19 in accordance with regulations prescribed by the
20 Secretary.

21 “(c) Compensation paid under this subchapter shall
22 be considered pay for all purposes, included but not lim-
23 ited to retirement benefits under chapters 83 and 84 of
24 title 5, United States Code, and other benefits. Notwith-
25 standing the preceding sentence, amounts paid for per-

1 formance pay under subsection (b)(3)(A) shall not be con-
2 sidered pay for retirement benefits under chapters 83 and
3 84 of title 5, United States Code.

4 “(d) Any decrease in pay that results from an adjust-
5 ment to the market or performance component of a physi-
6 cian’s or dentist’s total compensation does not constitute
7 an adverse action.

8 “(e) In no case may the total amount of compensa-
9 tion paid to a physician or dentist under this title in any
10 one year exceed the amount of annual compensation (ex-
11 cluding expenses) specified in section 102 of title 3, United
12 States Code.

13 “(f) COVERED POSITIONS.—

14 “(1) This subsection applies to physicians and
15 dentists in the following positions: Chiefs of Staff or
16 equivalent facility-level and Network-level clinical
17 management positions (including Network Clinical
18 Service Managers), facility and Network or Regional
19 executive positions (including Network Service Line
20 Coordinators and Medical Center/Health Care Sys-
21 tem Directors), Central Office executive positions,
22 and such other positions under this title as the Sec-
23 retary may determine in accordance with regulations
24 prescribed in accordance with section 7434(a).

1 “(2) Notwithstanding the special relationships
2 of the Veterans Health Administration with affili-
3 ated institutions under section 7302, physicians and
4 dentists serving in covered positions and receiving
5 compensation under this subchapter may not receive
6 any compensation on or after the date specified in
7 regulations issued by the Secretary, through employ-
8 ment or contract with, or negotiate or accept any
9 offer of employment from, any institution or other
10 entity that is affiliated with the VA medical center
11 to which they are assigned, or affiliated with a VA
12 medical center which falls under their official re-
13 sponsibilities. This limitation shall include receiving
14 compensation through or from practice groups or
15 any other entities associated with the affiliated insti-
16 tution(s), or from entities under contract with the
17 affiliated institution(s). Compensation includes any-
18 thing of monetary value, including but not limited to
19 honoraria, salary, and any fringe benefits such as:
20 tuition waiver, insurance protection, contributions to
21 a retirement fund, payment for books, below-market
22 interest loans, or employee discounts. Nothing in
23 this section precludes physicians and dentists in cov-
24 ered positions from holding uncompensated appoint-

1 ments as other than officer, director, or trustee with
2 affiliated institutions in furtherance of section 7302.

3 “(3) Subject to any conditions the Secretary
4 may be regulation prescribe, the Secretary may, on
5 a case-by-case basis, suspend or waive the limitation
6 in paragraph (2) to an individual physician or den-
7 tist, when necessary and appropriate to carry out
8 the purposes of section 7302, to assist communities
9 or practice groups to meet medical needs which oth-
10 erwise would not be met, or where the Secretary de-
11 termines that suspension or waiver would be in the
12 best interest of the United States. The Secretary
13 shall make any suspension or wavier made pursuant
14 to this paragraph in writing.

15 **“§ 7432. Transition to new pay system**

16 “(a) All current special pay agreements entered into
17 under the provisions of this subchapter in effect on the
18 day before the date of enactment of this Act shall termi-
19 nate on the date of enactment of this Act. Any physician
20 or dentist in receipt of special pay on that date shall con-
21 tinue to be compensated as if such agreement were still
22 in effect until the date specified in regulations issued by
23 the Secretary implementing this new subchapter.

24 “(b) Physicians and dentists appointed or reassigned
25 on or after the date of enactment of this Act, but before

1 implementation of this subchapter shall be compensated
2 in accordance with sections 7404, 7405, 7433, 7434,
3 7435, and 7436, as applicable, in effect on the day before
4 the date of enactment of this Act. Any such physician or
5 dentist shall continue to be compensated at the applicable
6 rates until such date specified in regulations issued by the
7 Secretary implementing the new pay system. No special
8 pay agreement will be required of any physician or dentist
9 receiving such pay.

10 “(c) During the period from the date of enactment
11 of this Act through the date of implementation of this sub-
12 chapter, physicians and dentists paid pursuant to this sec-
13 tion shall be subject to paragraphs (1), (2), (4), (5), and
14 (6) of subsection (b) of section 7438 in effect on the day
15 before the date of enactment of this Act.

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

22 “(e) Special pay subject to the provisions of section
23 7438, as in effect before the date of enactment of this
24 section, or subject to subsection (c), paid to Veterans
25 Health Administration physicians and dentists appointed

1 before the effective date of regulations implementing this
2 subchapter and who separate after such effective date,
3 shall be fully creditable for purposes of computing benefits
4 under chapters 83 and 84 of title 5.

5 **“§ 7433. Pay for Under Secretary for Health**

6 “(a) Section 5314 of title 5 establishes the base pay
7 for the Under Secretary for Health at Level III of the
8 Executive Schedule.

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

12 “(c) TRANSITION.—The current special pay agree-
13 ment of the Under Secretary for Health entered into
14 under the provisions of this subchapter in effect on the
15 day before the date of enactment of this Act shall termi-
16 nate on the date of enactment of this Act. The incumbent
17 Under Secretary for Health on the date of enactment of
18 this Act shall continue to receive special pay as if such
19 agreement were still in effect until the date specified in
20 regulations issued by the Secretary implementing this new
21 subchapter. Any Under Secretary for Health appointed on
22 or after the date of enactment of this Act, but before the
23 date specified in regulations issued by the Secretary imple-
24 menting this new subchapter, shall receive special pay in
25 accordance with sections 7432(d)(2), 7433, and 7437(a)

1 in effect on the day before the date of enactment of this
2 Act.

3 **“§ 7434. Administrative provisions**

4 “(a) After receiving the recommendations of the
5 Under Secretary for Health, the Secretary, pursuant to
6 the authority in section 7421(a), shall prescribe regula-
7 tions implementing the physician and dentist pay system
8 established in this new subchapter. Such regulations shall
9 include the method for computing the pay for all physi-
10 cians and dentists in the Veterans Health Administration
11 under this title.

12 “(b) Eighteen months after the Secretary issues reg-
13 ulations implementing this subchapter and annually there-
14 after for the next ten years, the Secretary shall provide
15 to the Committees on Veterans’ Affairs of the Senate and
16 House of Representatives a report on the implementation
17 of the authorities under this subchapter. Each report shall
18 include:

19 “(1) a description of the rates of pay in effect
20 during the preceding fiscal year with a comparison
21 to the rates in effect during the previous fiscal year
22 by facility and by specialty;

23 “(2) the number of physicians and dentists who
24 left employment with the Veterans Health Adminis-
25 tration during the preceding year;

1 “(3) the number of unfilled physician and den-
 2 tist positions in each specialty in the Veterans
 3 Health Administration, the average and maximum
 4 lengths of time that such positions have been un-
 5 filled, and a summary of the reasons that such posi-
 6 tions remain unfilled; and

7 “(4) an assessment of the impact of implemen-
 8 tation of this subchapter on efforts to recruit and re-
 9 tain physicians and dentists in the Veterans Health
 10 Administration.

11 In addition, the first two reports following implementation
 12 of this subchapter shall also include a comparison of staff-
 13 ing levels, contract expenditures, and average salary of
 14 physicians and dentists by facility and specialty for the
 15 preceding and previous fiscal years.”.

16 (b) The title and list of sections for Subchapter III
 17 in the table of sections at the beginning of Chapter 74
 18 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.”.

19 **SEC. 4. ALTERNATE WORK SCHEDULES.**

20 (a) Chapter 74 is amended by adding a new section
 21 7456a:

1 **“§ 7456a. Alternate work schedules**

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

4 “(b) 36/40 WORK SCHEDULE.—

5 “(1) Subject to paragraph (2), if the Secretary
6 determines it be necessary in order to obtain or re-
7 tain the services of registered nurses at any Depart-
8 ment health-care facility, the Secretary may provide,
9 in the case of nurses employed at such facility, that
10 such nurses who work three regularly scheduled 12-
11 hour tours of duty within a workweek shall be con-
12 sidered for all purposes (except computation of full-
13 time equivalent employees for the purposes of deter-
14 mining compliance with personnel ceilings) to have
15 worked a full 40-hour basic workweek.

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

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

25 “(C)(i) Such a nurse who performs a period of
26 service in excess of such nurse’s regularly scheduled

1 36-hour tour of duty within a workweek is entitled
2 to overtime pay under section 7453(e) of this title,
3 or other applicable law, for officially ordered or ap-
4 proved service performed in excess of eight hours on
5 a day other than a day on which such nurse's regu-
6 larly scheduled three 12-hour tours fall, or in excess
7 of 12 hours for any day included in the regularly
8 scheduled 36-hour tour of duty, or in excess of 40
9 hours during an administrative workweek.

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

16 “(3) A nurse who works a 36/40 work schedule
17 described in this subsection who is absent on ap-
18 proved sick leave or annual leave during a regularly
19 scheduled 12-hour tour of duty shall be charged for
20 such leave at a rate of ten hours of leave for nine
21 hours of absence.

22 “(c) 7/7 WORK SCHEDULE.—

23 “(1) Subject to paragraph (2), if the Secretary
24 determines it be necessary in order to obtain or re-
25 tain the services of registered nurses at any Depart-

1 ment health-care facility, the Secretary may provide,
2 in the case of nurses employed at such facility, that
3 such nurses who work seven regularly scheduled 10-
4 hour tours of duty, with seven days off duty, within
5 a two-week pay period, shall be considered for all
6 purposes (except computation of full-time equivalent
7 employees for the purposes of determining compli-
8 ance with personnel ceilings) to have worked a full
9 80 hours for the pay period.

10 “(2)(A) Basic and additional pay for a reg-
11 istered nurse who is considered under paragraph (1)
12 to have worked a full 80-hour pay period shall be
13 subject to subparagraphs (B) and (C).

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

19 “(C)(i) Such a nurse who performs a period of
20 service in excess of such nurse’s regularly scheduled
21 70-hour tour of duty within a pay period is entitled
22 to overtime pay under section 7453(e) of this title,
23 or other applicable law, for officially ordered or ap-
24 proved service performed in excess of eight hours on
25 a day other than a day on which such nurse’s regu-

1 larly scheduled seven 10-hour tours fall, or in excess
2 of 10 hours for any day included in the regularly
3 scheduled 70-hour tour of duty, or in excess of 80
4 hours during a pay period.

5 “(ii) Except as provided in subparagraph (i), a
6 registered nurse to whom this subsection is applica-
7 ble is not entitled to additional pay under section
8 7453 of this title, or other applicable law, for any
9 period included in a regularly scheduled 10-hour
10 tour of duty.

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

17 “(d) 9-MONTH WORK SCHEDULE.—The Secretary
18 may authorize a registered nurse appointed under section
19 7405, with the nurse’s written consent, to work full-time
20 for nine months with three months off duty, within a fiscal
21 year, and be paid at 75 percent of the full-time rate for
22 such nurse’s grade for each pay period of such fiscal year.
23 Such employee shall be considered a .75 full-time equiva-
24 lent employee in computing full-time equivalent employees
25 for the purposes of determining compliance with personnel

1 ceilings. Service on this schedule shall be considered part-
 2 time service for purposes of computing benefits under
 3 chapters 83 and 84 of title 5.

4 “(e) The Secretary shall prescribe regulations for the
 5 implementation of this section.”.

6 (b) The title and list of sections for Subchapter IV
 7 in the table of sections at the beginning of Chapter 74
 8 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.”.

9 **SEC. 5. NURSE EXECUTIVE SPECIAL PAY.**

10 (a) Section 7452 is amended by adding at the end
 11 thereof:

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

17 “(2) Special pay paid under paragraph (1) shall be
 18 a minimum of \$10,000 and a maximum of \$25,000. The
 19 amount paid to each nurse executive shall be based on fac-
 20 tors such as the grade of the nurse executive position, the

1 scope and complexity of the nurse executive position, the
2 nurse executive's personal qualifications, the characteris-
3 ties of the health-care facility, e.g., tertiary, single site or
4 multi-site, nature and number of specialty care units, dem-
5 onstrated recruitment and retention difficulties, and such
6 other factors the Secretary deems appropriate.

7 “(3) Special pay paid under paragraph (1) shall be
8 in addition to any other pay (including basic pay) and al-
9 lowances to which the nurse executive is entitled, and shall
10 be considered pay for all purposes, including but not lim-
11 ited to retirement benefits under chapters 83 and 84 of
12 title 5, United States Code, and other benefits, but shall
13 not be considered basic pay for purposes of adverse actions
14 under subchapter V.”

15 **SEC. 6. EFFECTIVE DATE.**

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

20 **SEC. 7. ADMINISTRATIVE PROVISION.**

21 (a) Chapter 74 is amended by adding a new section
22 7427:

1 **“§ 7427. Functions**

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

○