

EXEMPTION OF CERTAIN FULL-TIME HEALTH CARE PROFESSIONALS OF  
THE DEPARTMENT OF VETERANS AFFAIRS FROM RESTRICTIONS ON RE-  
MUNERATED OUTSIDE PROFESSIONAL ACTIVITIES

AUGUST 2, 1995.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. STUMP, from the Committee on Veterans' Affairs,  
submitted the following

R E P O R T

[To accompany H.R. 1384]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 1384) to amend title 38, United States Code, to exempt certain full-time health care professionals of the Department of Veterans Affairs from restrictions on remunerated outside professional activities, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 1, line 5, insert "(a) EXEMPTION OF CERTAIN HEALTH-CARE PROFESSIONALS FROM RESTRICTIONS ON REMUNERATED OUTSIDE PROFESSIONAL ACTIVITIES.—" before "Section".

Page 2, after line 22, insert the following:

(b) CROSS REFERENCE AMENDMENTS.—Subsection (d) of such section, as redesignated by subsection (a)(2), is amended—

(1) in the matter preceding paragraph (1), by striking out "subsection (b)(6)" and inserting in lieu thereof "subsection (b)(5)"; and

(2) in paragraph (2), by striking out “paragraph (1)(B)” and inserting in lieu thereof “section 7421(b) of this title”.

#### INTRODUCTION

The Subcommittee met on May 11, 1995 and recommended H.R. 1384 to the full Committee. The full Committee met on June 15, 1995 and ordered H.R. 1384 reported favorably to the House by unanimous voice vote.

#### SUMMARY OF THE REPORTED BILL

H.R. 1384 would:

1. Amend section 7423 of title 38, United States Code, to exempt registered professional nurses, physician assistants, and expanded-duty dental auxiliaries from restrictions regarding outside professional activities for remuneration.

2. Continue the limitation on outside remuneration for full-time title 38 health professionals such as physicians and dentists except under circumstances to assist medically under-served communities or to meet medical needs which would not otherwise be available to communities or medical practice groups. Waivers of periods up to 180 days may be granted by the Under Secretary for Health.

#### BACKGROUND AND DISCUSSION

In creating VA's Department of Medicine and Surgery in 1946, Congress established a personnel system under title 38 of the United States Code for VA doctors, nurses, and dentists. That personnel system, administered independently of the civil service system, was intended to give VA exclusive control to manage and operate its health care facilities. As part of that statutory framework, Congress also established restrictions on outside professional activities of those “title 38” health care employees.

Those “moonlighting” restrictions were instituted to ensure round-the-clock patient care coverage, and were a response to a “clock-punching” work ethic often at odds with actual patient care needs.

Much has changed in the VA health care system since the establishment of restrictions on outside professional activities. The role and working conditions of VA nurses, for example, has changed markedly since 1946. In those years, nurses often lived on station and were expected to be available to meet patient care needs. Since that time the nursing profession has undergone a major transformation from one of physician handmaiden to independent practitioner with physician collaboration. The change in professional status for nurses has also impacted the work schedule for nurses and removed the expectation of 24-hour availability. Most nurses today work a prescribed schedule of hours, as do physician assistants and expanded-duty dental auxiliaries.

Secondary employment, or “moonlighting,” becomes a problem when it interferes with staffing needs. The problem is most acute in connection with full-time VA physicians, who must be on-call 24 hours a day, 7 days a week, to meet patient care needs. However, registered nurses, physician assistants, and expanded-duty dental

auxiliaries to whom the “moonlighting” restrictions, as well as other aspects of the title 38 personnel system apply, do not have the same on-call demands as physicians.

VA has other effective means to assure nursing coverage and “moonlighting” restrictions are, for all practical purposes, irrelevant to maintaining that goal. The staffing needs that prompted a comprehensive “moonlighting” ban in law have long since changed. In the early 1970’s, for example, basic annual salary for a registered nurse, which had previously been based on availability for duty 24 hours per day, 7 days per week, was changed to provide for compensation at an hourly rate with increased salary accruing for non-standard schedules worked.

Not only have the “moonlighting” restrictions diminished in utility, they have also created problems of enforcement and unwelcome adverse effects on recruitment and retention in certain professions. For example, during the 1980’s, flexibility and economic considerations played a major part in the decision of many full-time VA nurses to shift to part-time schedules to escape the ban.

Given the need for many families to find new sources of income under current economic conditions, a comprehensive ban on outside employment appears unnecessarily sweeping and counterproductive to recruitment and retention. It is for these reasons that the Department and professional organizations representing these groups strongly supported efforts to remove the ban for registered professional nurses, physician assistants, and expanded-duty dental auxiliaries.

Lifting the ban on outside employment for selected professions could have real benefits for VA. The Department could reap benefits such as increased staff creativity by exposure to a variety of employment environments. It could also serve as a vehicle to improve professional skills through practice in private sector clinical areas that exceed or are different from those available in the VA. The Department has stated no objection to the bill.

Understanding the economic concerns of those groups affected by H.R. 1384 and supportive of their position as independent practitioners, the Chairman of the Subcommittee on Hospitals and Health Care was joined in a bipartisan effort with the Ranking Member of the Subcommittee to introduce this bill. Efforts to align VA employment practices to those of the private sector for registered professional nurses, physician assistants, and expanded-duty dental auxiliaries should greatly assist recruitment and retention efforts by procuring quality health care providers for VA facilities.

#### OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 20, 1995.*

Hon. BOB STUMP,  
*Chairman, Committee on Veterans' Affairs,  
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1384, a bill to amend title 38, United States Code, to exempt certain full-time health care professionals of the Department of Veterans Affairs from restrictions on remunerated outside activities as ordered reported by the House Committee on Veterans' Affairs on June 15, 1995.

The bill would have no significant impact on the budgets of federal, state, or local governments. H.R. 1384 would not be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL,  
*Director.*

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SECTION 7423 OF TITLE 38, UNITED STATES CODE**

**§ 7423. Personnel administration: full-time employees**

(a) \* \* \*

(b) A person covered by subsection (a) may not do any of the following:

【(1) Assume responsibility for the medical care of any patient other than a patient admitted for treatment at a Department facility, except in those cases where the person, upon request and with the approval of the Under Secretary for Health, assumes such responsibilities to assist communities or medical practice groups to meet medical needs which would not otherwise be available for a period not to exceed 180 calendar days, which may be extended by the Under Secretary for Health for additional periods not to exceed 180 calendar days each.】

【(2)】 (1) Teach or provide consultative services at any affiliated institution if such teaching or consultation will, because

of its nature or duration, conflict with such person's responsibilities under this title.

**[(3)]** (2) Accept payment under any insurance or assistance program established under title XVIII or XIX of the Social Security Act or under chapter 55 of title 10 for professional services rendered by such person while carrying out such person's responsibilities under this title.

**[(4)]** (3) Accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5.

**[(5)]** (4) Request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, except where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title.

**[(6)]** (5) Perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both.

*(c)(1) An employee of the Veterans Health Administration who is covered by subsection (a) (other than a registered nurse, a physician's assistant, or an expanded-duty dental auxiliary) may not assume responsibility for the medical care of any patient other than a patient admitted for treatment at a Department facility.*

*(2) The limitation in paragraph (1) shall not apply in a case in which the employee, upon request and with the approval of the Under Secretary for Health, assumes such responsibilities to assist communities or medical practice groups to meet medical needs which would not otherwise be available. The approval of the Under Secretary may not be for a period in excess of 180 days, which may be extended by the Under Secretary for additional periods of not to exceed 180 days.*

**[(c)]** (d) In the case of any fund or account described in **[subsection (b)(6)]** *subsection (b)(5)* that was established before September 1, 1973—

(1) the affiliated institution shall submit semiannually an accounting to the Secretary and to the Comptroller General of the United States with respect to such fund or account and shall maintain such fund or account subject to full public disclosure and audit by the Secretary and the Comptroller General for a period of three years or for such longer period as the Secretary shall prescribe, and

(2) no person in a position specified in **[paragraph (1)(B)]** *section 7421(b) of this title* may receive any cash from amounts deposited in such fund or account derived from services performed before that date.

**[(d)]** (e) As used in this section:

(1) The term “affiliated institution” means a medical school or other institution of higher learning with which the Secretary has a contract or agreement as referred to in section 7313 of this title for the training or education of health personnel.

(2) The term “remuneration” means the receipt of any amount of monetary benefit from any non-Department source in payment for carrying out any professional responsibilities.

**[(e)]** (f)(1) The Secretary shall establish a leave transfer program for the benefit of health-care professionals in positions listed in section 7401(1) of this title. The Secretary may also establish a leave bank program for the benefit of such health-care professionals.

(2) To the maximum extent feasible—

(A) the leave transfer program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

(B) any leave bank program established pursuant to paragraph (1) shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

(3) Participation by a health-care professional in the leave transfer program established pursuant to paragraph (1), and in any leave bank program established pursuant to such paragraph, shall be voluntary. The Secretary may not require any health-care professional to participate in such a program.

(4)(A) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) to participate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5 or in any leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5, or both.

(B) Participation of such health-care professionals in a leave transfer program or a leave bank program pursuant to an agreement entered into under subparagraph (A) shall be subject to such requirements and conditions as may be prescribed in such agreement.

(5) The Secretary is not required to establish a leave transfer program for any personnel permitted to participate in a leave transfer program pursuant to an agreement referred to in paragraph (4).

**[(f)]** (g) The Secretary may purchase promotional items of nominal value for use in the recruitment of individuals for employment under this chapter. The Secretary shall prescribe guidelines for the administration of the preceding sentence.