

DELEGATION AGREEMENT

U.S. Office of Personnel Management and Department of Defense

The U.S. Office of Personnel Management (OPM), under the authority of sections 1104 and 5371 of title 5, United States Code, authorizes the Department of Defense (DOD) to use certain personnel authorities under 38 U.S.C. chapter 74 for employees holding positions to which 5 U.S.C. chapter 51 applies (excluding members of the Senior Executive Service) and which involve health care responsibilities, subject to the requirements and restrictions herein. For purposes of this agreement, "health care" means direct patient-care services or services incident to direct patient-care services.

OPM is delegating to DOD discretionary use of certain title 38 provisions that are primarily available to the Department of Veterans Affairs. If DOD uses one of the authorities in this delegation agreement, the comparable authority in title 5 is waived. The provisions listed are those directly related to pay rates and systems, premium pay, classification, and hours of work, as provided in 5 U.S.C. 5371. DOD and OPM responsibilities are listed in the Statement of Responsibilities (Attachment A) and the Statement of Delegations (Attachment B). The delegations are provided for in the Statement of Delegations (Attachment B).

All actions taken under this delegation agreement must conform to requirements of law and any regulations or instructions issued by OPM. DOD may redelegate these authorities to the extent permitted by statutory provisions for the delegated authorities and agency internal delegations of authority.

The DOD official responsible for the overall administration of the delegated authorities is:

Name: Michael Cogar
Title: Deputy Assistant Secretary of Defense (Civilian Personnel Policy)
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The DOD official responsible for serving as subject matter expert on the delegated authorities and providing information to OPM is:

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Title: Human Resources Specialist
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DOD may terminate this agreement at any time with 90 days advance notice to OPM. OPM may terminate this delegation agreement at any time for reasons such as, but not limited to: (a) evidence of inequitable treatment of employees, (b) identifiable violations of statutory requirements and/or abuses of merit system principles in 5 U.S.C. 2301, or (c) failure to coordinate with other participating agencies and OPM. In such cases, DOD agrees to immediate OPM supervision of its delegated health care personnel authorities to ensure no further abuses or to provide for an orderly phase-out of the authority.

Effective Date: Upon DOD signature

Under 5 U.S.C. 5371, the authority delegated to DOD to use certain personnel provisions of title 38, United States Code, will remain in effect through June 30, 2030.



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(Signature)

Veronica E. Hinton
Associate Director
Workforce Policy and Innovation
U.S. Office of Personnel Management

November 14, 2025

DATE



(Signature)

Michael Cogar
Deputy Asst. Sec. of Defense
Civilian Personnel Policy
Department of Defense

November 21, 2025

DATE

<p style="text-align: center;">STATEMENT OF RESPONSIBILITIES FOR PROVISIONS AVAILABLE UNDER 5 U.S.C. 5371</p>
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The following Department of Defense (DOD) and U.S. Office of Personnel Management (OPM) responsibilities apply to the overall program for delegated health-care personnel authorities under 5 U.S.C. 5371 and 38 U.S.C. chapter 74 and must be adhered to accordingly; each delegated provision references additional DOD and OPM responsibilities. In implementing any of these provisions, the intent of title 38 should be taken into consideration. Each provision's relationship to other provisions, such as retirement and the Fair Labor Standards Act, must be adhered to accordingly.

I. DOD Responsibilities for the Overall Program

- A. Develop appropriate written policies and procedures, apply them fairly and consistently, and assure they meet the following requirements:
- Maintain quality staffing levels among facilities;
 - Abide by statutory requirements including merit system principles; and
 - Avoid unwarranted competition with other agencies using these authorities.
- B. Issue written regulations and/or guidelines and consult with employee organizations, as appropriate.
- C. Take such action as OPM may require to correct any action(s) contrary to law, regulations, or this delegation agreement.
- D. Participate and cooperate in the activities of the Interagency Committee on Health Care Occupations and attend any required Committee meetings. Discuss major pay authorities for which consensus must be reached prior to implementation as specified in the agreement under the specific provisions.
- E. Share policy information and pay survey data with other agencies using these authorities. Minimize the burden on the non-Federal sector by sharing survey information with other Federal health-care employers and preventing duplicative pay surveys. Upon request, provide OPM with reports and data from surveys of non-Federal employers.
- F. To the extent that authorities are redelegated within DOD, assure that all provisions of this agreement are met by the designees to which the authorities are delegated.

- G. Maintain auditable program records. Provide OPM with information and access to records upon request.
- H. Maintain an internal review program to monitor use of these provisions. Provide OPM with program information and access to records upon request.
- I. Prior to renewal of the delegation agreement, participate in OPM's evaluation of the DOD program and policies, including the use of each provision, by health-care facility name and location and type of occupation. Provide OPM with program policies and documentation upon request.

II. OPM Responsibilities for Overall Program

- A. Establish the Interagency Committee on Health Care Occupations that includes the agencies receiving these title 38 delegated authorities. Assure that the Committee meets as needed and participate in the meetings. Assist the Committee in establishing operating procedures as needed.
- B. Assure coordination among the participating agencies and sharing of information among them.
- C. Provide technical assistance on the delegated authorities, as requested.
- D. Monitor each agency's programs to ensure compliance with 5 U.S.C. 5371 including written policies and procedures developed for each provision and the agency's internal audit programs.
- E. Prior to renewal of the delegation agreement, evaluate each agency's program, policies, and documentation for compliance with law.
- F. Monitor legislative changes in title 38, United States Code, assist agencies in complying with the changes, and draft amendments to this delegation agreement as appropriate.

STATEMENT OF DELEGATIONS FOR PROVISIONS AVAILABLE UNDER 5 U.S.C. 5371
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The U.S. Office of Personnel Management (OPM) delegates to the Department of Defense (DOD) the following title 38 provisions as provided in 5 U.S.C. 5371:

- *Special Salary Rate Authority* -- § 7455(a)(1), (a)(2)(A) and (B), (b), (c), and (d)
- *Baylor Plan and Alternate Work Schedules* -- § 7456 and § 7456A
- *Premium Pay* -- § 7453, § 7454, and § 7457(a) and (b)
- *Authority to Establish Qualifications* -- § 7402(a), (b), (d), and (f)
- *Qualification-based Grading System* -- § 7403(a), (b)(4), (c), (e), and (f)(1)
- *Head Nurse Pay and Nurse Executive Special Pay* -- § 7452(a)(2) and (g)
- *Hours of Employment* -- § 7421(a) and § 7423(a)
- *Pay for Physicians, Podiatrists, Optometrists, and Dentists* -- § 7431(a), (b), (c), (d), (e), (f), and (h); § 7432; and § 7433
- *Nurse and Other Health-Care Personnel: Competitive Pay System* -- § 7451(a), (b), (c), (d), (e), and (f)
- *Special Incentive Pay for Pharmacist Executives* -- § 7410(b).

Each delegated provision references the title 38 citation, occupations covered, and agency and OPM responsibilities. The terms “agency” and “Department” in the delegated provisions below refer to DOD. The term “Secretary” refers to the Secretary, Administrator, Director, or other applicable agency head.

I. Special Salary Rate Authority

Citation:

38 U.S.C. 7455(a)(1), (a)(2)(A) and (B), (b), (c), and (d)

§ 7455. Increases in rates of basic pay.

(a)(1) Subject to subsections (b), (c), and (d), when the Secretary determines it to be necessary in order to obtain or retain the services of persons described in paragraph (2), the Secretary may increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations. Any increase in such rates of basic pay—

(A) may be made on a nationwide basis, local basis, or other geographic basis; and

(B) may be made—

(i) for one or more of the grades listed in the schedules in subsection (b)(1) of section 7404 of this title;

(ii) for one or more of the health personnel fields within such grades; or

(iii) for one or more of the grades of the General Schedule under section 5332 of title 5.

(2) Paragraph (1) applies to the following:

(A) Individuals employed in positions listed in paragraphs (1) and (3) of section 7401 of this title.

(B) Health-care personnel who—

(i) are employed in the Administration (other than administrative, clerical, and physical plant maintenance and protective services employees);

(ii) are paid under the General Schedule pursuant to section 5332 of title 5;

(iii) are determined by the Secretary to be providing either direct patient-care services or services incident to direct patient-care services; and

(iv) would not otherwise be available to provide medical care and treatment for veterans.

(b) Increases in rates of basic pay may be made under subsection (a) only in order—

(1) to provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of personnel at non-Federal facilities in the same labor market;

(2) to achieve adequate staffing at particular facilities; or

(3) to recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

(c)(1) Subject to paragraph (2), the amount of any increase under subsection (a) in the minimum rate for any grade may not (except in the case of nurse anesthetists, licensed practical nurses, licensed vocational nurses, nursing positions otherwise covered by title 5, pharmacists, and licensed physical therapists) exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 of title 5 or similar provision of law) for the grade or level by more than 50 percent.

(2) No rate may be established under this section in excess of the rate of basic pay payable for level II of the Executive Schedule.

(3)(A) Notwithstanding section 5304 of title 5 or any other provision of law, but subject to the limitation under paragraph (2), pursuant to an increase under subsection (a), the Secretary may pay a special rate or an adjusted rate of basic pay in excess of the rate of basic pay payable for level IV of the Executive Schedule.

(B) If an employee is in receipt of a special rate of pay under subparagraph (A) in excess of the rate of basic pay payable for level IV of the Executive Schedule with an established special rate supplement of greater value than a supplement based on the applicable locality based comparability payment percentage under section 5304 of title 5, but a pay adjustment would cause such established special rate supplement to be of lesser value, the special rate supplement shall be converted to a supplement based on the applicable locality-based comparability percentage unless the Secretary determines that some other action is appropriate.

(d)(1) In the exercise of the authority provided in subsection (a) with respect to personnel described in subparagraph (B)...of paragraph (2) of that subsection to increase the rates of basic pay for any category of personnel not appointed under subchapter I, the Secretary shall, not less than 45 days before the effective date of a proposed increase, notify the President of the Secretary's intention to provide such an increase.

(2) Such a proposed increase shall not take effect if, before the effective date of the proposed increase, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval.

(3) If, before that effective date, the President approves such increase, the Secretary may advance the effective date to any date not earlier than the date of the President's approval.

Occupations Covered:

Individuals employed in the following positions performing direct patient care services and services incident to direct patient care services (as prescribed by 5 U.S.C. 5371):

- Positions covered by 38 U.S.C. 7401(1)--physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses (and nurse anesthetists), physician assistants, and expanded-function dental auxiliaries.
- Positions covered by 38 U.S.C. 7401(3)-- audiologists, licensed hearing aid specialists, speech pathologists, audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient

specialists, statisticians, economists, informaticists, data scientists, and such other classes of health care occupations as the agency head considers necessary for the recruitment and retention needs of the agency subject to the requirements in 38 U.S.C. 7401(3)(A).

- Individuals employed in positions that meet the criteria specified in 38 U.S.C. 7455(a)(2)(B)--health-care personnel who are employed in the Administration (other than administrative, clerical, and physical plant maintenance and protective services employees) who would be paid under the General Schedule pursuant to section 5332 of title 5 were it not for the provisions of this agreement, and are determined by the agency head to be providing either direct patient-care services or services incident to direct patient-care services, and would not otherwise be available to provide medical care and treatment for veterans.

Agency Responsibilities:

- A. An agency may not use the special salary rate authority for advanced practice nurses, physician assistants, registered nurses, nurse anesthetists or other covered positions, as in the delegation provisions of section 7455, in conjunction with competitive pay, as in the delegation provisions of 38 U.S.C. 7451.
- B. Special salary rates established under 38 U.S.C. 7455 for the "Occupations Covered," above, are subject to the caps specified in 38 U.S.C. 7455(c). Exceptions—
 1. The EX-I cap on competitive pay rates for advanced practice nurses (including nurse anesthetists) and physician assistants under 38 U.S.C. 7451(c)(2)(A)(i) and (c)(2)(A)(ii), respectively, may be applied to special rates established for such occupations under 38 U.S.C. 7455 in lieu of the EX-II cap under 38 U.S.C. 7455(c)(2).
 2. The competitive pay cap provisions for nurse anesthetists under 38 U.S.C. 7451(c)(2)(B) may be applied to special rates established for nurse anesthetists under 38 U.S.C. 7455 in lieu of the EX-II cap under 38 U.S.C. 7455(c)(2).
 3. The 50 percent special rate cap under 38 U.S.C. 7455(c)(1) does not apply to nurse anesthetists, licensed practical nurses, licensed vocational nurses, nursing positions otherwise covered by title 5, pharmacists, and licensed physical therapists. (See this exception for such occupations in 38 U.S.C. 7455(c)(1).)

Note: The 133 percent and 175 percent competitive pay caps under 38 U.S.C. 7451(c)(1) may not be applied to special rates established under 38 U.S.C. 7455.

- C. OPM will determine the applicability of the pay caps under 38 U.S.C. 7455(c) and 38 U.S.C. 7451(c)(2) to special rates established under 5 U.S.C. 5305 for the "Occupations Covered," above consistent with the provisions in paragraph B.

- D. When conducting pay surveys for the purpose of adjusting pay rates under 38 U.S.C. 7455, the agency will obtain a representative sample of the full range of rates paid for the position(s) in the relevant labor market. The agency will minimize the burden on the non-Federal sector by sharing pay survey data with other Federal health-care employers and preventing duplicative pay surveys. Upon request, the agency will provide OPM with pay survey reports.
- E. For each instance in which the agency proposes to increase rates of basic pay for occupations covered by section 7455(a)(2)(B) and Executive Order 12797, the agency must provide OPM with the following information:
1. A completed Form 1397, Special Rate Request Form, or alternative form for each increase in rates of basic pay proposed by the agency.
 2. A transmittal letter to OPM that specifies the proposed effective date. The letter should include a statement that provides sufficient background as to the facts and circumstances which necessitate the proposal of special salary rates.
 3. A report on contacts the agency has made with other Federal agencies that might be affected by the proposed increase in rates of basic pay. Included in the report will be a summary of available information on what actions, if any, the other agencies will take or have taken and what efforts have been taken to share pay survey data with other Federal agencies.
 4. Regarding changes in rates made in connection with an agency review of existing authorizations subject to OPM oversight, prior to the effective date of a statutory increase in the General Schedule, the agency may increase existing authorizations equal to and simultaneous with the General Schedule increase without further OPM notification. The agency must apply the procedures outlined in Agency Responsibilities (C) (1), (2), and (3) for authorizations for which the agency is proposing a greater or smaller increase, or changed grade or geographic coverage.
 5. The required documentation for each proposed pay action must be submitted initially to the Deputy Associate Director for Pay, Leave, and Workforce Flexibilities, Workforce Policy and Innovation, Office of Personnel Management, Room 7H31, 1900 E St., NW, Washington, DC, 20415-8200, and emailed to paypolicy@opm.gov.
- F. The agency must provide a quarterly report on special rate tables established and made effective during the previous quarter.

OPM Responsibilities:

- A. For occupations listed in paragraphs (1) and (3) of 38 U.S.C. 7401 (including nurse anesthetists), OPM will assure coordination and information sharing among the agencies using this provision. As such, OPM requires agencies to provide a quarterly report on special rate tables established and made effective during the previous quarter.
- B. For occupations covered by section 7455(a)(2)(B) and Executive Order 12797, OPM will provide the agency with written notice of its decision on each proposed pay action within 45 days, as stated in section 7455(d)(1). If OPM reviews the information in less than 45 days, the agency may authorize an earlier effective date than initially proposed.

II. Baylor Plan and Alternative Work Schedules

Citation:

38 U.S.C. 7456

§ 7456. Nurses: special rules for weekend duty.

(a) Subject to subsection (b), if the Secretary determines it to be necessary in order to obtain or retain the services of nurses at any Department health-care facility, the Secretary may provide, in the case of nurses appointed under this chapter and employed at such facility, that such nurses who work two regularly scheduled 12-hour tours of duty within the period commencing at midnight Friday and ending at midnight the following Sunday 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.

(b)(1) Basic and additional pay for a nurse who is considered under subsection (a) to have worked a full 40-hour basic workweek shall be subject to paragraphs (2) and (3).

(2) The hourly rate of basic pay for such a nurse for service performed as part of a regularly scheduled 12-hour tour of duty within the period commencing at midnight Friday and ending at midnight the following Sunday shall be derived by dividing the nurse's annual rate of basic pay by 1,248.

(3)(A) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled two 12-hour tours of duty 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 Saturday or Sunday or in excess of 24 hours within the period commencing at midnight Friday and ending at midnight the following Sunday.

(B) Except as provided in subparagraph (C), a 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.

(C) If the Secretary determines it to be further necessary in order to obtain or retain the services of nurses at a particular facility, a nurse to whom this paragraph is applicable who performs service in excess of such nurse's regularly scheduled two 12-hour tours of duty may be paid overtime pay under section 7453(e) of this title, or other applicable law, for all or part of the hours of officially ordered or approved service performed by such nurse in excess of 40 hours during an administrative workweek.

(c) The Secretary shall prescribe regulations for the implementation of this section.

Occupations Covered:

Individuals employed as civilian registered nurses and nurse anesthetists. This provision may be extended to include health-care personnel other than those in Senior Executive Service positions performing direct patient-care services or services incident to direct patient-care services that would be covered by chapter 51 of title 5, United States Code, were it not for the provisions of this agreement.

Agency Responsibilities:

If the agency head or designee deems it necessary to provide registered nurses, nurse anesthetists, or employees at any agency health-care facility who are employed in occupations that would be covered by 5 U.S.C. chapter 51 were it not for the provisions of this agreement with special rules for weekend duty, then the agency head or designee must authorize weekend duty schedules and payments in accordance with section 7456. The agency's official policies that describe eligibility for the Baylor plan must be applied consistently to the occupations that the agency determines will be covered by this provision and follow merit system principles.

OPM Responsibilities:

Periodically evaluate the agency's use of this provision for compliance with law.

Citation:

38 U.S.C. 7456A

§ 7456A. Nurses: alternate work schedules.

(a) **APPLICABILITY-** This section applies to registered nurses appointed under this chapter.

(b) **72/80 WORK SCHEDULE- (1)(A)** Subject to paragraph (2), if the Secretary determines it to 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 six regularly scheduled 12-hour

tours of duty within a 14-day period shall be considered for all purposes to have worked a full 80-hour pay period.

(B) A nurse who works under the authority in subparagraph (A) shall be considered a 0.90 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

(2)(A) Basic and additional pay for a 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 a nurse covered by this paragraph for service performed as part of a regularly scheduled 36-hour tour of duty within the work week shall be derived by dividing the nurse's annual rate of basic pay by 1,872.

(C) The Secretary shall pay overtime pay to a nurse covered by this paragraph who--

(i) performs a period of service in excess of such nurse's regularly scheduled 36-hour tour of duty within an administrative work week;

(ii) for officially ordered or approved service, performs a period of service in excess of 8 hours on a day other than a day on which such nurse's regularly scheduled 12-hour tour of duty falls;

(iii) performs a period of service in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty work week; or

(iv) performs a period of service in excess of 40 hours during an administrative work week.

(D) The Secretary may provide a nurse to whom this subsection applies with additional pay under section 7453 of this title 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 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.

(c) HOLIDAY PAY- A nurse working a work schedule under subsection (b) that includes a holiday designated by law or Executive order shall be eligible for holiday pay under section 7453(d) of this title for any service performed by the nurse on such holiday under such section.

(d) 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 full time for nine months with 3 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.

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

(3) Work under this subsection shall be considered part-time 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 full-time employee for purposes of chapter 89 of title 5.

(e) NOTIFICATION OF MODIFICATION OF BENEFITS - The Secretary shall provide each employee with respect to whom an alternate work schedule under this section may apply written notice of the effect, if any, that the alternate work schedule will have on the employee'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 employee consents to the alternate work schedule.

(f) REGULATIONS - The Secretary shall prescribe regulations to carry out this section.

Occupations Covered:

Individuals employed as civilian registered nurses. This provision may be extended to include health-care personnel other than those in Senior Executive Service positions performing direct patient-care services or services incident to direct patient-care services that would be covered by chapter 51 of title 5, United States Code, were it not for the provisions of this agreement.

Agency Responsibilities:

- A. If the agency head or designee deems it necessary to provide registered nurses or employees at any agency health-care facility who are employed in occupations that would be covered by 5 U.S.C. chapter 51 were it not for the provisions of this agreement with alternate work schedules pursuant to section 7456A, then the agency head or designee must authorize such schedules in accordance with section 7456A. The agency's official policies that describe eligibility for alternate work schedules under the provisions of section 7456A must be applied consistently to the occupations that the agency determines will be covered by this provision and follow merit system principles.
- B. The agency may use one or both of the alternate work schedule provisions (i.e., 72/80 Work Schedule and the 9-Month Work Schedule) in section 7456A at a given time.

OPM Responsibilities:

Periodically evaluate the agency's use of this provision for compliance with law.

III. Premium Pay

Citation:

38 U.S.C. 7453

§ 7453. Nurses: additional pay.

(a) In addition to the rate of basic pay provided for nurses, a full-time nurse or part-time nurse shall receive additional pay as provided by this section.

(b) A nurse performing service, any part of which is within the period commencing at 6 postmeridian and ending at 6 antemeridian, shall receive additional pay for each hour of such service at a rate equal to 10 percent of the nurse's hourly rate of basic pay if at least four hours of such service fall between 6 postmeridian and 6 antemeridian. When less than four hours of such service fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of service performed between those hours.

(c) A nurse performing service, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of such service at a rate equal to 25 percent of such nurse's hourly rate of basic pay.

(d) A nurse performing service on a holiday designated by Federal statute or Executive order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two hours in duration.

(e)(1) A nurse performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight consecutive hours, shall receive overtime pay for each hour of such additional service. The overtime rates shall be one and one-half times such nurse's hourly rate of basic pay.

(2) For the purposes of this subsection, overtime must be of at least 15 minutes duration in a day to be creditable for overtime pay.

(3) Compensatory time off in lieu of pay for service performed under the provisions of this subsection shall not be permitted, except as voluntarily requested in writing by the nurse in question.

(4) Any excess service performed under this subsection on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration.

(5) For the purposes of this subsection, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless—

(A) such travel occurs during such nurse's period of service; or

(B) such travel—

(i) involves the performance of services while traveling,

(ii) is incident to travel that involves the performance of services while traveling,

(iii) is carried out under arduous conditions as determined by the Secretary, or

(iv) results from an event which could not be scheduled or controlled administratively.

(f) For the purpose of computing the additional pay provided by subsection (b), (c), (d), or (e), a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by 2,080.

(g) When a nurse is entitled to two or more forms of additional pay under subsection (b), (c), (d), or (e) for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in subsection (e) shall be payable for overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under subsection (d) for such service.

(h) A nurse who is officially scheduled to be on call outside such nurse's regular hours or on a holiday designated by Federal statute or Executive order shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 percent of the hourly rate for excess service as provided in subsection (e).

(i) Any additional pay paid pursuant to this section shall not be considered as basic pay for the purposes of the following provisions of title 5 (and any other provision of law relating to benefits based on basic pay):

(1) Subchapter VI of chapter 55.

(2) Section 5595.

(3) Chapters 81, 83, 84, and 87.

(j)(1) Notwithstanding any other provision of law and subject to paragraph (2), the Secretary may increase the rates of additional pay authorized under subsections (b) through (h) if the Secretary determines that it is necessary to do so in order to obtain or retain the services of nurses.

(2) An increase under paragraph (1) in rates of additional pay—

(A) may be made at any specific Department health-care facility in order to provide nurses, or any category of nurses, at such facility additional pay in an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses at non-Federal health-care facilities in the same geographic area as such Department health-care facility (based upon a reasonably representative sampling of such non-Federal facilities); and

(B) may be made on a nationwide, local, or other geographic basis if the Secretary finds that such an increase is justified on the basis of a review of the need for such increase (based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved).

Occupations Covered:

Individuals employed as civilian registered nurses and nurse anesthetists that perform direct patient-care services or services incident to direct patient care services (as prescribed by 5 U.S.C. 5371).

Agency Responsibilities:

A. If the agency head or designee deems it necessary to provide registered nurses and nurse anesthetists at any agency health-care facility with premium pay under any subsection of 38 U.S.C. 7453, then the agency head or designee must authorize

premium pay in accordance with the delegated provisions of section 7453. The agency's official policies that describe eligibility for and amounts of premium pay must be applied consistently to the occupations that the agency determines will be covered by this provision and follow merit system principles.

- B. If the agency head or designee deems it necessary to increase the rates of additional pay, as in 38 U.S.C. 7453(j), in order to obtain or retain the services of nurses, then the agency head or designee must authorize increases in premium pay in accordance with section 7453(b) through (h). The agency head must make the decision that an increase is justified on the basis of a review of the need for such increase, i.e., based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved. The agency's official policies that describe eligibility for and amounts of increases in premium pay must be applied consistently to the employees covered by this provision and follow merit system principles.
- C. The agency may use one or more of the premium pay provisions in section 7453 at a given time.
- D. If the agency pays Saturday and Sunday pay under 38 U.S.C. 7453(c) to nurses under a flexible work schedule established under 5 U.S.C. chapter 61, subchapter II, the comparable Sunday premium pay provisions under 5 U.S.C. 5546(a), definition of "Sunday work" at 5 CFR 550.103, and Sunday pay provisions of 5 CFR 550.171-172 are waived. This means the 8-hour limit on title 5 Sunday pay is waived and Saturday and Sunday premium pay under 7453(c) may be paid for each hour of service (including overtime hours) that a nurse performs under a title 5 flexible work schedule.
- E. If the agency pays holiday pay under 38 U.S.C. 7453(d) to nurses under a flexible work schedule established under 5 U.S.C. chapter 61, subchapter II, the comparable holiday premium pay provisions under 5 U.S.C. 5546(b), definition of "holiday work" at 5 CFR 550.103, and the holiday pay provisions of 5 CFR 550.131-132 are waived. An agency may waive the 8-hour limit on holiday pay for a nurse under a title 5 flexible work schedule if it applies the authority under 38 U.S.C. 7421(a) under this delegation agreement. Otherwise, the 8-hour limit cannot be waived because that limit is derived from the flexible work schedule statute at 5 U.S.C. 6124, not the holiday premium pay law/regulations.

OPM Responsibilities:

- A. Periodically evaluate the agency's use of this provision for compliance with law.
- B. Ensure that the agencies receiving this authority coordinate use of this provision and share information.

Citation:

38 U.S.C. 7454

§ 7454. Physician assistants and other health care professionals: additional pay.

(a) Physician assistants and expanded-function dental auxiliaries shall be entitled to additional pay on the same basis as provided for nurses in section 7453 of this title.

(b)(1) When the Secretary determines it to be necessary in order to obtain or retain the services of individuals in positions listed in section 7401(3) of this title, the Secretary may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in section 7453 of this title.

(2) Health care professionals employed in positions referred to in paragraph (1) shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.

(3) Employees appointed under section 7408 of this title performing service on a tour of duty, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay in addition to the rate of basic pay provided such employees for each hour of service on such tour at a rate equal to 25 percent of such employee's hourly rate of basic pay.

(c) The Secretary shall prescribe by regulation standards for compensation and payment under this section.

Occupations Covered:

Individuals employed in the following positions performing direct patient care services and services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371):

- Individuals employed as physicians assistants and expanded-function dental auxiliaries.
- Positions covered by 38 U.S.C. 7401(3)— audiologists, licensed hearing aid specialists, speech pathologists, audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient

specialists, statisticians, economists, informaticists, data scientists, and such other classes of health care occupations as the agency head considers necessary for the recruitment and retention needs of the agency subject to the requirements in 38 U.S.C. 7401(3)(A).

- Other health-care personnel other than personnel in Senior Executive Service positions performing direct patient-care services or services incident to direct patient-care services who would be covered by chapter 51 of title 5, United States Code, were it not for the provisions of this agreement.

Agency Responsibilities:

- A. If the agency head or designee deems it necessary to provide employees at any health-care facility who are employed in the occupations covered under this provision with premium pay under any subsection of 38 U.S.C. 7453 and 7454, then the agency head or designee must authorize premium pay in accordance with the delegated provisions of sections 7453 and 7454. The agency's official policies that describe eligibility for and amounts of premium pay must be applied consistently to the occupations that the agency determines will be covered by this provision and follow merit system principles.
- B. If the agency head or designee deems it necessary to increase the rates of additional pay under any subsection of 38 U.S.C. 7453 in order to obtain or retain the services of employees in occupations covered by this provision, then the agency head or designee must authorize increases in premium pay in accordance with sections 7453(b) through (h). The agency head must make the decision that an increase is justified on the basis of a review of the need for such increase, i.e., based upon a reasonably representative sampling of non-Federal health-care facilities in the geographic area involved. The agency's official policies that describe eligibility for and amounts of increases in premium pay must be applied consistently to the employees covered by this provision and follow merit system principles.
- C. The agency may use one or more of the premium pay provisions in sections 7453 and 7454 at a given time.
- D. If the agency pays Saturday and Sunday pay under 38 U.S.C. 7453(c) to physician assistants and other health care professionals under a flexible work schedule established under 5 U.S.C. chapter 61, subchapter II, the comparable Sunday premium pay provisions under 5 U.S.C. 5546(a), definition of "Sunday work" at 5 CFR 550.103, and Sunday pay provisions of 5 CFR 550.171-172 are waived. This means the 8-hour limit on title 5 Sunday pay is waived and Saturday and Sunday premium pay under 7453(c) may be paid for each hour of service (including overtime hours) that a physician assistants and other health care professionals performs under a title 5 flexible work schedule.

- E. If the agency pays holiday pay under 38 U.S.C. 7453(d) to physician assistants and other health care professionals under flexible work schedule established under 5 U.S.C. chapter 61, subchapter II, the comparable holiday premium pay provisions under 5 U.S.C. 5546(b), definition of "holiday work" at 5 CFR 550.103, and the holiday pay provisions of 5 CFR 550.131-132 are waived. An agency may waive the 8-hour limit on holiday pay for a physician assistant and other health care professional under a title 5 flexible work schedule if it applies the authority under 38 U.S.C. 7421(a) under this delegation agreement. Otherwise, the 8-hour limit cannot be waived because that limit is derived from the flexible work schedule statute at 5 U.S.C. 6124, not the holiday premium pay law/regulations.

OPM Responsibilities:

- A. Periodically evaluate the agency's use of this provision for compliance with law.
- B. Ensure that the agencies receiving this authority coordinate use of this provision and share information.

Citation:

38 U.S.C. 7457(a) and (b)

§ 7457. On-call pay.

(a) The Secretary may pay an employee to whom this section applies pay at the rate provided in section 7453(h) of this title except for such time as the employee may be called back to work.

(b) This section applies to an employee who meets each of the following criteria:

(1) The employee is employed in a position listed in paragraph (3) of section 7401 of this title or meets the criteria specified in clauses (i), (ii), and (iii) of section 7455(a)(2)(B) of this title.

(2) The employee is employed in a work unit for which on-call premium pay is authorized.

(3) The employee is officially scheduled to be on-call outside such employee's regular hours or on a holiday designated by Federal statute or Executive order.

Occupations Covered:

Individuals employed in the following positions performing direct patient care services and services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371):

- Positions covered by 38 U.S.C. 7401(3)—audiologists, licensed hearing aid specialists, speech pathologists, audiologist-speech pathologists, biomedical

engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient specialists, statisticians, economists, informaticists, data scientists, and such other classes of health care occupations as the agency head considers necessary for the recruitment and retention needs of the agency subject to the requirements in 38 U.S.C. 7401(3)(A).

- Other health-care personnel other than personnel in Senior Executive Service positions performing direct patient-care services or services incident to direct patient-care services who would be covered by chapter 51 of title 5, United States Code, were it not for the provisions of this agreement.

Agency Responsibilities:

If the agency head or designee deems it necessary to provide employees at any agency health-care facility who are employed in the occupations covered under this provision with on-call pay, then the agency head or designee must authorize on-call pay in accordance with sections 7453(h) and 7457. The agency's official policies that describe eligibility for on-call pay must be applied consistently to the employees covered by this provision and follow merit system principles.

OPM Responsibilities:

- A. Periodically evaluate the agency's use of this provision for compliance with law.
- B. Ensure that the agencies receiving this authority coordinate use of this provision and share information.

IV. Authority to Establish Qualifications

The agency is delegated authority under chapters 33 and 51 of title 5, United States Code, to establish unique qualifications in lieu of qualifications established by OPM provided that the requirements of 38 U.S.C. 7402 are met.

Citation:

38 U.S.C. 7402(a), (b), (d), and (f)

§ 7402. Qualifications of appointees.

(a) To be eligible for appointment to the positions in the Administration covered by subsection (b), a person must have the applicable qualifications set forth in that subsection.

(b)(1) Physician.--To be eligible to be appointed to a physician position, a person must—
(A) hold the degree of doctor of medicine or of doctor of osteopathy from a college or university approved by the Secretary,
(B) have completed an internship satisfactory to the Secretary, and
(C) be licensed to practice medicine, surgery, or osteopathy in a State.

(2) Dentist.--To be eligible to be appointed to a dentist position, a person must—
(A) hold the degree of doctor of dental surgery or dental medicine from a college or university approved by the Secretary, and
(B) be licensed to practice dentistry in a State.

(3) Nurse.--To be eligible to be appointed to a nurse position, a person must—
(A) have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, and
(B) be registered as a graduate nurse in a State.

(4) Director of a Hospital, Domiciliary, Center, or Outpatient Clinic.--To be eligible to be appointed to a director position, a person must have such business and administrative experience and qualifications as the Secretary shall prescribe.

(5) Podiatrist.--To be eligible to be appointed to a podiatrist position, a person must—
(A) hold the degree of doctor of podiatric medicine, or its equivalent, from a school of podiatric medicine approved by the Secretary, and
(B) be licensed to practice podiatry in a State.

(6) Optometrist.--To be eligible to be appointed to an optometrist position, a person must—
(A) hold the degree of doctor of optometry, or its equivalent, from a school of optometry approved by the Secretary, and
(B) be licensed to practice optometry in a State.

(7) Pharmacist.--To be eligible to be appointed to a pharmacist position, a person must—
(A) hold the degree of bachelor of science in pharmacy, or its equivalent, from a school of pharmacy, approved by the Secretary, and
(B) be registered as a pharmacist in a State.

(8) Psychologist.--To be eligible to be appointed to a psychologist position, a person must--
(A) hold a doctoral degree in psychology from a college or university approved by the Secretary,

(B) have completed study for such degree in a specialty area of psychology and an internship which are satisfactory to the Secretary, and
(C) be licensed or certified as a psychologist in a State, except that the Secretary may waive the requirement of licensure or certification for an individual psychologist for a period not to exceed two years on the condition that that psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified.

(9) Social Worker.--To be eligible to be appointed to a social worker position, a person must--

(A) hold a master's degree in social work from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice social work in a State, except that the Secretary may waive the requirement of licensure or certification for an individual social worker for a reasonable period of time recommended by the Under Secretary of Health.

(10) Marriage and Family Therapist— To be eligible to be appointed to a marriage and family therapist position, a person must -

(A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.

(11) Licensed Professional Mental Health Counselor. - To be eligible to be appointed to a licensed professional mental health counselor position, a person must -

(A) hold a master's degree or doctoral degree in mental health counseling, or a related field, from a college or university approved by the Secretary; and

(B) be licensed or certified to independently practice mental health counseling.

(12) Chiropractor. - To be eligible to be appointed to a chiropractor position, a person must -

(A) hold the degree of doctor of chiropractic, or its equivalent, from a college of chiropractic approved by the Secretary; and

(B) be licensed to practice chiropractic in a State.

(13) Peer Specialist. - To be eligible to be appointed to a peer specialist position, a person must -

(A) be a veteran who has recovered or is recovering from a mental health condition; and
(B) be certified by -

(i) a not-for-profit entity engaged in peer specialist training as having met such criteria as the Secretary shall establish for a peer specialist position; or

(ii) a State as having satisfied relevant State requirements for a peer specialist position.

(14) Other Health-Care Positions.--To be appointed as a physician assistant, expanded-function dental auxiliary, certified or registered respiratory therapist, licensed physical therapist, licensed practical or vocational nurse, occupational therapist, dietitian, microbiologist, chemist, biostatistician, medical technologist, dental technologist, or other position, a person must have such medical, dental, scientific, or technical qualifications as the Secretary shall prescribe.

(d) A person may not be appointed under section 7401(1) of this title to serve in the Administration in any direct patient-care capacity unless the Under Secretary for Health determines that the person possesses such basic proficiency in spoken and written English as will permit such degree of communication with patients and other health-care personnel as will enable the person to carry out the person's health-care responsibilities satisfactorily. Any determination by the Under Secretary for Health under this subsection shall be in accordance with regulations which the Secretary shall prescribe.

(f) A person may not be employed in a position under subsection (b) (other than under paragraph (4) of that subsection) if -

(1) the person is or has been licensed, registered, or certified (as applicable to such position) in more than one State; and

(2) either -

(A) any of those States has terminated such license, registration, or certification for cause; or

(B) the person has voluntarily relinquished such license, registration, or certification in any of those States after being notified in writing by that State of potential termination for cause.

Occupations Covered:

Individuals providing direct patient-care services or services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371) employed as physicians, dentists, registered nurses (and nurse anesthetists), directors of a hospital, domiciliary, center, or outpatient clinic, podiatrists, optometrists, pharmacists, psychologists, social workers, marriage and family therapists, licensed professional mental health counselors, chiropractors, peer specialists, physician assistants, expanded-function dental auxiliaries, certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, occupational therapists, dietitians, microbiologists, chemists, biostatisticians, medical technologist, dental technologist, or other position for which a person must have such medical, dental, scientific, or technical qualifications as prescribed by the agency head.

Agency Responsibilities:

A. The agency may use 38 U.S.C. 7402 only in conjunction with a qualification-based grading system as outlined in 38 U.S.C. 7403.

- B. Unique qualifications may be implemented for an occupation once the agencies of the Interagency Committee for Health Care Occupations have reached consensus on the agency's plan.
- C. The agency must provide OPM with information on the agency's qualifications upon request.

OPM Responsibilities:

Periodically evaluate the agency's use of this provision for compliance with law.

V. Qualification-based Grading System

Citation:

38 U.S.C. 7403(a), (b)(4), (c), (e), and (f)(1)

§ 7403. Period of appointments; promotions.

(a)(1) Appointments under this chapter of health-care professionals to whom this section applies may be made only after qualifications have been satisfactorily established in accordance with regulations prescribed by the Secretary, without regard to civil-service requirements.

(2) This section applies to the following persons appointed under this chapter:

(A) Physicians. **(B)** Dentists. **(C)** Podiatrists. **(D)** Optometrists. **(E)** Nurses. **(F)** Physician assistants. **(G)** Expanded-function dental auxiliaries. **(H)** Chiropractors.

(b)(4) The record of each person serving under such an appointment in the Medical, Dental, and Nursing Services shall be reviewed from time to time by a board, appointed in accordance with regulations of the Secretary. If such a board finds that such person is not fully qualified and satisfactory, such person shall be separated from the service.

(c) Promotions of persons to whom this section applies shall be made only after examination given in accordance with regulations prescribed by the Secretary. Advancement within grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Secretary.

(e) In accordance with regulations prescribed by the Secretary, the grade and annual rate of basic pay of a person to whom this section applies whose level of assignment is changed from a level of assignment in which the grade level is based on both the nature of the assignment and personal qualifications may be adjusted to the grade and annual rate of basic pay otherwise appropriate.

(f)(1) Upon the recommendation of the Under Secretary for Health, the Secretary may--
(A) use the authority in subsection (a) to establish the qualifications for and (subject to

paragraph (2)) to appoint individuals to positions listed in section 7401(3) of this title; and
(B) use the authority provided in subsection (c) for the promotion and advancement of Department employees serving in such positions.

Occupations Covered:

Individuals employed in the following positions performing direct patient care services and services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371):

- Positions covered by 38 U.S.C. 7401(3)—audiologists, licensed hearing aid specialists, speech pathologists, audiologist-speech pathologists, biomedical engineers, certified or registered respiratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, nurse assistants, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical technologists, dental hygienists, dental assistants, nuclear medicine technologists, occupational therapists, occupational therapy assistants, kinesiotherapists, orthotist-prosthetists, pharmacists, pharmacy technicians, physical therapy assistants, prosthetic representatives, psychologists, diagnostic radiologic technologists, therapeutic radiologic technologists, social workers, marriage and family therapists, licensed professional mental health counselors, blind rehabilitation specialists, blind rehabilitation outpatient specialists, statisticians, economists, informaticists, data scientists, and such other classes of health care occupations as the agency head considers necessary for the recruitment and retention needs of the agency subject to the requirements in 38 U.S.C. 7401(3)(A).
- Other health-care personnel other than personnel in Senior Executive Service positions performing direct patient-care services or services incident to direct patient-care services who would be covered by chapter 51 of title 5, United States Code, were it not for the provisions of this agreement.

Agency Responsibilities:

- A. Qualification-based grading system, as under the delegated provision in 38 U.S.C. 7403, may be implemented for an occupation once the agencies on the Interagency Committee for Health Care Occupations reach consensus on a agency's plan.
- B. Provide OPM with information on the agency's qualification-based grading system upon request.

OPM Responsibilities:

Periodically evaluate the agency's use of this provision for compliance with law.

VI. Head Nurse Pay and Nurse Executive Special Pay

Citation:

38 U.S.C. 7452(a)(2) and (g)

§ 7452. Nurses and other health-care personnel: administration of pay.

(a)(2) A nurse serving in a head nurse position shall while so serving receive basic pay at a rate two step increments above the rate that would otherwise be applicable to the nurse. If such a nurse is in the highest or next-to-highest step for that nurse's grade, the preceding sentence shall be applied by extrapolation to create additional steps only for the purposes of this paragraph. The limitation in section 7451(c)(1) of this title shall not apply with respect to increased basic pay under this paragraph.

(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 health care 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 \$100,000.

(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 health care facility concerned, the nature and number of specialty care units at the health care facility concerned, demonstrated difficulties in recruitment and retention of nurse executives at the health care 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 of this chapter.

Occupations Covered:

Head Nurse Pay: Individuals performing direct patient-care services or services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371) employed as civilian registered nurses and nurse anesthetists.

Nurse Executive Special Pay: Individuals performing direct patient-care services or services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371) employed as civilian nurse executives, i.e., a registered nurse who is the highest ranking official responsible for nursing programs at a health care facility. Nurse executive pay may not be paid to a member of the Senior Executive Service.

Agency Responsibilities:

- A. If the agency head or designee deems it necessary to provide nurses who are serving in head nurse positions with basic pay at a rate two step increments above the rate that would otherwise be applicable to them, then the agency head or designee must authorize head nurse pay in accordance with section 7452(a)(2). The agency's official policies that describe eligibility for head nurse pay must be applied consistently to the civilian registered nurses and nurse anesthetists covered by this provision and follow merit system principles.
- B. If the agency head or designee deems it necessary to provide nurses who are serving in nurse executive positions with special pay, then the agency head or designee must authorize special pay in accordance with section 7452(g). The agency's official policies that describe eligibility for nurse executive pay must be applied consistently to the civilian nurse executives covered by this provision and follow merit system principles.

OPM Responsibilities:

Periodically evaluate the agency's use of these provisions for compliance with law and the delegation agreement.

VII. Hours of Employment

Citation:

38 U.S.C. 7421(a)

§ 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...[for individuals employed] in positions...[under the "Occupations Covered" section].

Occupations Covered:

- Individuals performing direct patient-care services or services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371) receiving pay for physicians, podiatrists, optometrists, and dentists under the Physicians, Podiatrists, Optometrists, and Dentists Pay System (38 U.S.C. 7431 through 7433).
- Individuals performing direct patient-care services or services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371) covered by and receiving holiday pay under 38 U.S.C. 7453(c) or 7454 while under a flexible work schedule established under 5 U.S.C. 6124.

Citation:

38 U.S.C. 7423(a)

§ 7423. Personnel administration: full-time employees

(a)(1) Except as provided in paragraph (2), the hours of employment in carrying out responsibilities under this title of any employee who is appointed in the Administration under any provision of this chapter on a full-time basis in a position listed in section 7421(b) of this title (other than an intern or resident appointed pursuant to section 7406 of this title) and who accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title shall consist of not less than 80 hours in a biweekly pay period (as that term is used in section 5504 of title 5).

(2) (A) Upon the advance written request of a covered physician, the Secretary may modify the hours of employment for a physician appointed in the Administration under any provision of this chapter on a full-time basis to be more or less than 80 hours in a biweekly pay period, subject to the requirements in subparagraph (B). For the purpose of determining pay, such a physician shall be deemed to have a biweekly schedule of 80 hours of employment.

(B) A physician with an irregular work schedule established under subparagraph (A) shall be obligated to account for at least 2,080 hours of employment (through performance of work or use of leave or paid time off) in a calendar year.

(C) The Secretary may prescribe regulations to implement this paragraph, including regulations making adjustments to address the annual hours requirement for physicians who are covered by this paragraph for only a portion of a calendar year.

Occupations Covered:

Physicians performing direct patient-care services or services incident to direct patient-care services (as prescribed by 5 U.S.C. 5371) receiving pay under the Physicians, Podiatrists, Optometrists, and Dentists Pay System (38 U.S.C. 7431 through 7433).

Agency Responsibilities:

This section may be used pending implementation by VA and issuance of its policy. Agency policy must be consistent with that of VA. In order to deviate from VA policy, consensus must be obtained from the Interagency Committee for Health Care Occupations.

OPM Responsibilities:

Periodically evaluate the agency's use of this provision for compliance with law.

VIII. Pay for Physicians, Podiatrists, Optometrists, and Dentists

Citation:

38 U.S.C. 7431(a), (b), (c), (d), (e), (f), and (h)

§ 7431. Pay.

(a) ELEMENTS OF PAY- Pay of physicians, podiatrists, optometrists, 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) Performance pay as provided under subsection (d).

(b) BASE PAY- One element of pay for physicians, podiatrists, optometrists, and dentists shall be base pay. Base pay shall meet the following requirements:

- (1) Each physician, podiatrist, optometrist, and dentist is entitled to base pay determined under the Physician, Podiatrist, Optometrist, and Dentist Base and Longevity Pay Schedule.
- (2) The Physician, Podiatrist, Optometrist, 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, podiatrist, optometrist or dentist is based on the total number of the years of the service of the physician, podiatrist, optometrist or dentist in the Veterans Health Administration as follows:

For a physician, podiatrist, optometrist or dentist with total service of:

The rate of base pay is the rate payable for:

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 the amount 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.

(5) The non-foreign cost of living adjustment allowance authorized under section 5941 of title 5 for physicians, podiatrists, optometrists, and dentists whose pay is set under this section shall be determined as a percentage of base pay only.

(c) MARKET PAY- One element of pay for physicians, podiatrists, optometrists, and dentists shall be market pay. Market pay shall meet the following requirements:

(1) Each physician, podiatrist, optometrist and dentist is eligible for market pay.

(2) Market pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment (as defined by the Secretary) of a particular physician, podiatrist, optometrist or dentist in a facility of the Department of Veterans Affairs.

(3) The annual amount of the market pay payable to a physician, podiatrist, optometrist or dentist shall be determined by the Secretary on a case-by-case basis.

(4) The determination of the amount of market pay of a physician, podiatrist, optometrist or dentist shall take into account--

(A) the level of experience of the physician, podiatrist, optometrist or dentist in the specialty or assignment of the physician, podiatrist, optometrist or dentist;

(B) the need for the specialty or assignment of the physician, podiatrist, optometrist or dentist at the medical facility of the Department concerned;

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

(D) the board certifications, if any, of the physician, podiatrist, optometrist or dentist;

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

(F) such other considerations as the Secretary considers appropriate.

(5) The amount of market pay of a physician, podiatrist, optometrist 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, podiatrist, optometrist or dentist whose market pay is evaluated under this paragraph shall receive written notice of the results of such evaluation in accordance with procedures prescribed under section 7433 of this title. Such a notice shall include a statement of whether the market pay will increase, decrease, or remain unchanged following such evaluation.

(6) No adjustment of the amount of market pay of a physician, podiatrist, optometrist or dentist under paragraph (5) may result in a reduction of the amount of market pay of the physician, podiatrist, optometrist or dentist while in the same position or assignment at the medical facility of the Department concerned, unless there is a change in board certification or reduction of privileges.

(7) The Secretary shall ensure that each physician, podiatrist, optometrist, and dentist in the Veterans Health Administration is—

(A) advised, on an annual basis, of the criteria described in subparagraph (F) of paragraph (4);

- (B) evaluated in accordance with such criteria; and
- (C) compensated in accordance with—
 - (i) applicable assignment and pay levels, subject to relevant pay limitations; and
 - (ii) the extent to which such criteria are met.

(d) PERFORMANCE PAY-

- (1) One element of pay for physicians, podiatrists, optometrists, and dentists shall be performance pay.
- (2) Performance pay shall be paid to a physician, podiatrist, optometrist or dentist on the basis of the physician's or dentist's achievement of specific goals and performance objectives prescribed by the Secretary.
- (3) The Secretary shall ensure that each physician, podiatrist, optometrist and dentist of the Department is advised of the specific goals or objectives that are to be measured by the Secretary in determining the eligibility of that physician, podiatrist, optometrist or dentist for performance pay.
- (4) The amount of the performance pay payable to a physician, podiatrist, optometrist or dentist may vary annually on the basis of individual achievement or attainment of the goals or objectives applicable to the physician, podiatrist, optometrist or dentist under paragraph (2).
- (5) The amount of performance pay payable to a physician, podiatrist, optometrist or dentist in a fiscal year shall be determined in accordance with regulations prescribed by the Secretary, but may not exceed the lower of--
 - (A) \$15,000; or
 - (B) the amount equal to 7.5 percent of the sum of the base pay and the market pay payable to such physician, podiatrist, optometrist or dentist in that fiscal year.
- (6) A failure to meet goals or objectives applicable to a physician, podiatrist, optometrist or dentist under paragraph (2) may not be the sole basis for an adverse personnel action against that physician, podiatrist, optometrist or dentist.

(e) REQUIREMENTS AND LIMITATIONS ON TOTAL PAY-

- (1)(A) Not less often than once every two years, the Secretary shall prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid under this section to physicians and the minimum and maximum amounts of annual pay that may be paid under this section to podiatrists, and dentists.
- (B) The Secretary may prescribe for Department-wide applicability under this paragraph separate minimum and maximum amounts of pay for a specialty or assignment. If the Secretary prescribes separate minimum and maximum amounts for a specialty or assignment, the Secretary may establish up to four tiers of minimum and maximum amounts for such specialty or assignment 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, podiatrists, optometrists, or dentists (as the case may be) whose pay is set within that tier.
- (C) Amounts prescribed under this paragraph shall be published in the Federal Register, and shall not take effect until at least 60 days after the date of publication.

(2) Except as provided in paragraph (3) and subject to paragraph (4), the sum of the total amount of the annual rate of base pay payable to a physician, podiatrist, optometrist or dentist under subsection (b) and the market pay determined for the physician, podiatrist, optometrist or dentist under subsection (c) may not be less than the minimum amount, nor more than the maximum amount, applicable to specialty or assignment of the physician, podiatrist, optometrist or dentist under paragraph (1).

(3) The sum of the total amount of the annual rate of base pay payable to a physician, podiatrist, optometrist or dentist under subsection (b) and the market pay determined for the physician, podiatrist, optometrist or dentist under subsection (c) may exceed the maximum amount applicable to the specialty or assignment of the physician, podiatrist, optometrist or dentist under paragraph (1) as a result of an adjustment under paragraph (3) or (4) of subsection (b).

(4) Except as provided in sections 7404A(c) and 7410(a)(2) of this title, in no case may the total amount of compensation paid to a physician, podiatrist, optometrist or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(5) Notwithstanding any compensation or pay limitations under this title or title 5, the Secretary may authorize the Under Secretary for Health to pay physicians, podiatrists, optometrists, and dentists—

(A) awards authorized under this title;

(B) advance payments, recruitment or relocation bonuses, and retention allowances authorized under section 7410(a) of this title or as otherwise provided by law;

(C) incentives or bonuses under section 706 of this title or as otherwise provided by law; and

(D) earnings from fee-basis appointments under section 7405(a)(2) of this title.

(f) TREATMENT OF PAY- Pay under subsections (b) and (c) of this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

(h) DELEGATION OF RESPONSIBILITIES- The Secretary may delegate to an appropriate officer or employee of the Department any responsibility of the Secretary under subsection (c), (d), or (e) except for the responsibilities of the Secretary under subsection (e)(1).

Citation:

38 U.S.C. 7432

§ 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, podiatrist, optometrist, 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.

(c) TREATMENT OF PAY- Pay under this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

Citation:

38 U.S.C. 7433(a)

§ 7433. Administrative matters.

(a) REGULATIONS-

The Secretary shall prescribe regulations relating to the pay of physicians, optometrists, podiatrists, and dentists in the Veterans Health Administration under this subchapter.

(b) RECOMMENDATIONS AND VIEWS.—In prescribing the regulations, the Secretary shall take into account the recommendations of the Under Secretary for Health on the administration of this subchapter. In formulating recommendations for the purpose of this subsection, the Under Secretary shall request the views of representatives of labor organizations that are exclusive representatives of physicians, optometrists, podiatrists, and dentists of the Department and the views of representatives of professional organizations of physicians, optometrists, podiatrists, and dentists of the Department.

Occupations Covered:

Individuals performing direct patient-care services or services incident to direct-care services (as prescribed by 5 U.S.C. 5371) employed as physicians, podiatrists, optometrists, and dentists.

Agency Responsibilities:

- A. Pay for full-time physicians, podiatrists, optometrists, and dentists, as under the delegated provisions of 38 U.S.C. 7431 through 7433, may be implemented for an occupation once the agencies on the Interagency Committee for Health Care Occupations reach consensus on the agency's plan.

- B. If desired, in determining the amount of the market pay for a particular physician, podiatrist, optometrist, or dentist under this subsection, and in determining a tier (if any) to apply to a physician, podiatrist, optometrist, or dentist under subsection (e)(1)(B), the agency head may consult with and consider the recommendations of an appropriate panel or board composed of supervisors/managers.
- C. Pay under any provision of sections 7431 through 7433 may not be paid in conjunction with any premium pay (including compensatory time off in lieu of overtime pay and compensatory time off for travel) under chapter 55 of title 5, United States Code.
- D. If the agency head or designee deems it necessary to provide pay under the physician, podiatrist, optometrist, and dentist pay system for certain categories of physicians, podiatrists, optometrists, or dentists, the agency head or designee must pay the individual physician, podiatrist, optometrist or dentist according to the conditions specified in the delegated provisions of sections 7431 through 7433 being used. The agency must determine individual salaries for physicians, podiatrists, optometrists, and dentists using the nationwide pay ranges and specialties published in the Federal Register by the Department of Veterans Affairs (VA) under the authority of 38 U.S.C. 7431(e). If the agency has a physician, podiatrist, optometrist, or dentist specialty not covered by one of the pay ranges established by VA, the agency may (1) cover that specialty under an existing VA pay range or (2) establish a new pay range, consistent with the requirements for establishing pay ranges under 38 U.S.C. 7431. The agency will notify OPM and the Interagency Committee for Healthcare Occupations if it adds a new specialty to an existing VA pay range or establishes a new pay range and issue a Federal Register notice as required by 38 U.S.C. 7431(e)(1)(C). The agency may not pay physicians or dentists a physicians' comparability allowance under 5 U.S.C. 5948 and pay for physicians under the physicians, podiatrists, optometrists, and dentists pay system simultaneously.
- E. The agency may apply one or more of the pay provisions in 38 U.S.C. 7431 – 7433 selectively at a given time. The agency may continue to provide base pay to the agency's physicians, podiatrists, optometrists, and dentists under the General Schedule (GS) pay system instead of implementing the base pay provisions in 38 U.S.C. 7431(b). The agency may pay market pay and performance pay under 38 U.S.C. 7431(c) and (d) in addition to the GS base rates. The physicians, podiatrists, optometrists, and dentists who receive market pay under 38 U.S.C. 7431(c) are no longer entitled to receive any locality payments under 5 U.S.C. 5304 or special rate supplements under 5 U.S.C. 5305 or 38 U.S.C. 7455.
- F. In determining the amount of a physician's, podiatrist's, optometrist's, or dentist's market pay upon initial conversion to the title 38 physician, podiatrist, optometrist and dentist pay system, the agency must take into account any loss of pay resulting from the payment of title 38 market pay instead of the former title 5 physicians' comparability allowance and title 5 locality payments or title 5 or title