

DEPARTMENT OF VETERANS AFFAIRS NURSE
RECRUITMENT AND RETENTION ACT OF 2004

JUNE 9, 2004.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. SMITH of New Jersey, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 4231]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4231) to provide for a pilot program in the Department of Veterans Affairs to improve recruitment and retention of nurses, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of Veterans Affairs Nurse Recruitment and Retention Act of 2004".

SEC. 2. PILOT PROGRAM TO STUDY INNOVATIVE RECRUITMENT TOOLS TO ADDRESS NURSING SHORTAGES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH-CARE FACILITIES.

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

(2) The Secretary shall conduct a pilot program in the region or section designated under paragraph (1) to determine the effectiveness of the use of innovative human-capital tools and techniques in the recruitment of qualified nurses for positions at Department health-care facilities and for the retention of nurses at such facilities. In carrying out the pilot program, the Secretary shall enter into a contract with a private-sector entity for services under the pilot program for recruitment of qualified nurses.

(b) **PRIVATE-SECTOR RECRUITMENT PRACTICES.**—For purposes of the pilot program under this section, the Secretary shall identify and use recruitment practices that have proven effective for placing qualified individuals in positions that are difficult

to fill due to shortages of qualified individuals or other factors. Recruitment practices to be reviewed by the Secretary for use in the pilot program shall include—

- (1) employer branding and interactive advertising strategies;
- (2) Internet technologies and automated staffing systems; and
- (3) the use of recruitment, advertising, and communication agencies.

(c) STREAMLINED HIRING PROCESS.—In carrying out the pilot program under this section, the Secretary shall, at health-care facilities of the Department in the region or section in which the pilot program is conducted, revise procedures and systems for selecting and hiring qualified nurses to reduce the length of the hiring process. If the Secretary identifies measures to streamline and automate the hiring process that can only be implemented if authorized by law, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives recommendations for such changes in law as may be necessary to enable such measure to be implemented.

(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the extent to which the pilot program achieved the goal of improving the recruitment and retention of nurses in Department of Veterans Affairs health-care facilities.

SEC. 3. ALTERNATE WORK SCHEDULES FOR NURSES.

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

“§ 7456a. Alternate work schedules

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

“(b) 36/40 WORK SCHEDULE.—(1) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at a Department health-care facility, the Secretary may provide, in the case of registered nurses employed at that facility, that such a nurse who works three regularly scheduled 12-hour tours of duty within a workweek 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. Such a schedule may be referred to as a ‘36/40 work schedule’.

“(2) (A) Basic and additional pay for a registered nurse who is considered under paragraph (1) to have worked a full 40-hour basic workweek is subject to subparagraphs (B) and (C).

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

“(C) (i) Such a nurse who performs a period of service in excess of such nurse’s regularly scheduled 36-hour tour of duty within a workweek 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—

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

“(II) 12 hours for any day included in the regularly scheduled 36-hour tour of duty; and

“(III) 40 hours during an administrative workweek.

“(ii) Except as provided in clause (i), a registered 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.

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

“(c) 7/7 Work Schedule.—(1) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at a Department health-care facility, the Secretary may provide, in the case of registered nurses employed at such facility, that such a nurse who works seven regularly scheduled 10-hour tours of duty, with seven days off duty, within a two-week pay period, 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 80 hours for the pay period. Such a schedule may be referred to as a ‘7/7 work schedule’.

“(2) (A) Basic and additional pay for a registered nurse who is considered under paragraph (1) to have worked a full 80-hour pay period is subject to subparagraphs (B) and (C).

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

“(C) (i) Such a nurse who performs a period of service in excess of such nurse’s regularly scheduled 70-hour tour of duty within a pay period 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—

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

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

“(III) 80 hours during a pay period.

“(ii) Except as provided in subparagraph (i), a registered 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 10-hour tour of duty.

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

“(d) 9-MONTH WORK SCHEDULE.—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 three 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 that fiscal year. A nurse working on such a schedule for any fiscal year shall be considered a $\frac{3}{4}$ full-time equivalent employee for that fiscal year in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings. Service on such a schedule shall be considered to be part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

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

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 74 of such title is amended by inserting after the item relating to section 7456 the following new item:

“7456a. Alternate work schedules.”

SEC. 4. APPOINTMENT OF NURSES WHO DO NOT HAVE BACCALAUREATE DEGREES.

Section 7403 of title 38, United States Code, is amended by adding at the end the following new subsection:

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

SEC. 5. TECHNICAL CORRECTION TO LISTING OF CERTAIN HYBRID POSITIONS IN VETERANS HEALTH ADMINISTRATION.

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

(1) by striking “and dental technologists” and inserting “technologists, dental hygienists, dental assistants”; and

(2) by striking “technicians, therapeutic radiologic technicians, and social workers” and inserting “technologists, therapeutic radiologic technologists, social workers, blind rehabilitation specialists, and blind rehabilitation outpatient specialists”.

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

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

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

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

“(b) ELIGIBLE RECIPIENTS.—Payments to a State for a fiscal year under this section shall, subject to submission of an application, be made to any State that during that year—

“(1) receives per diem payments under this subchapter for that fiscal year; and

“(2) has in effect an employee incentive scholarship program or other employee incentive program at a State home designed to promote the hiring and retention of nursing staff and to reduce nursing shortages at that home.

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

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

“(2) The amount of the payment to a State under this section for any fiscal year is, for each State home in that State with a program described in subsection (b)(2), the amount equal to 2 percent of the amount of payments estimated to be made to that State, for that State home, under section 1741 of this title for that fiscal year.

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

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

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

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

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

“(j) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. The regulations shall include the establishment of criteria for the award of payments under this section.”

(2) The table of sections at the beginning of such chapter is amended by inserting after section 1743 the following new item:

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

(b) IMPLEMENTATION.—The Secretary of Veterans Affairs shall implement section 1744 of title 38, United States Code, as added by subsection (a), as expeditiously as possible. The Secretary shall establish such interim procedures as necessary so as to ensure that payments are made to eligible States under that section commencing not later than January 1, 2005, notwithstanding that regulations under subsection (j) of that section may not have become final.

SEC. 7. TECHNICAL CLARIFICATION.

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

SEC. 8. UNDER SECRETARY FOR HEALTH.

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

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

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

INTRODUCTION

The reported bill reflects the Committee's consideration of two bills in the 108th Congress, H.R. 4231 and H.R. 4020, and a provision of a draft bill to reform the qualifications and selection requirements for the position of the Under Secretary for Health. On April 28, 2004, Honorable Rob Simmons introduced H.R. 4231, the Department of Veterans Affairs Nurse Recruitment and Retention Act of 2004. On March 24, 2004, Honorable Christopher H. Smith and Honorable Lane Evans introduced H.R. 4020, the State Veterans Home Nurse Recruitment Act of 2004.

On May 6, 2004, the Subcommittee on Health held a legislative hearing to consider these bills. H.R. 4231 would: establish a pilot program to use outside recruitment agencies, and interactive and online technologies, to improve the Department of Veterans Affairs (VA) recruitment of nursing personnel; allow VA to offer three new alternative work schedules for nurses; prohibit VA from denying employment to a registered nurse because the nurse lacks a baccalaureate degree; and include blind rehabilitation specialists with certain other health care positions that the VA would be permitted to appoint through the use of a direct appointment authority. H.R. 4020 would direct VA to make payments to states for assisting State veterans' homes in hiring nurses to care for veterans. A draft proposal considered at that hearing would reform the qualifications and selection requirements for the position of the Under Secretary for Health.

Witnesses who appeared before the Subcommittee included Honorable Gordon H. Mansfield, Deputy Secretary, Department of Veterans Affairs, who was accompanied by Honorable Tim S. McClain, General Counsel; Jonathan B. Perlin, M.D., Acting Under Secretary for Health; and Mr. Thomas J. Hogan, Deputy Assistant Secretary for Human Resources Management. Witnesses also included Linda S. Schwartz, R.N., Dr.PH, Commissioner of the Connecticut Department of Veterans Affairs; Andrea Mengel, Ph.D., R.N., Head, Department of Nursing, Community College of Philadelphia, representing the American Association of Community Colleges; Mr. Robert Van Keuren, Chair of The VA Advisory Committee on Homeless Veterans; Ms. Marsha Four, R.N., Chair of The VA Advisory Committee on Women Veterans; Ms. Cathleen C. Wiblemo, Deputy Director, Health Care, The American Legion; Mr. Rick Weidman, Director, Government Relations, Vietnam Veterans of America; Mr. Richard Jones, National Legislative Director, AMVETS; Mr. Richard Fuller, National Legislative Director, Paralyzed Veterans of America; Mr. Dennis Cullinan, National Legislative Director, Veterans of Foreign Wars; and Mr. Adrian M. Atizado, Assistant National Legislative Director, Disabled American Veterans.

On May 13, 2004, the Subcommittee on Health met and unanimously ordered H.R. 4231, as amended, reported favorably to the full Committee.

On May 19, 2004, the full Committee met and ordered H.R. 4231, as amended, reported favorably to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 4231, as amended, would:

1. Establish a pilot program within the Department of Veterans Affairs (VA) to study the use of outside recruitment, advertising and communications agencies and the use of interactive and online technologies to improve VA's program for recruiting nursing personnel.
2. Authorize the Secretary of Veterans Affairs to offer three new options for alternative tours of duty for nurses working in VA health care facilities. The first option would allow a nurse to work three regularly scheduled 12-hour tours of duty within a workweek (a total of 36 hours) and be paid as having worked 40 hours. The second option would allow a nurse, who works seven regularly scheduled 10-hour tours of duty with seven days off duty within a two-week pay period, to be considered to have worked a full 80 hours for the pay period. The third option would allow a nurse to work full-time for nine months with three months off duty within a year, with pay apportioned over the 12-month period.
3. Clarify that VA may not deny employment to a registered nurse solely due to the lack of a baccalaureate degree in nursing.
4. Include blind rehabilitation specialists in the list of positions VA is permitted to hire through use of the direct appointment authority provided in title 38, United States Code.
5. Direct the Secretary to make payments to States to assist in hiring and retaining nurses in State homes; make eligible for such payments a State home that has an employee incentive program and is receiving per diem payments from VA; limit the amount of payment a State home may receive each year; require a State home receiving such payment to provide an annual report to VA; and require VA to implement the assistance program so that eligible States would begin to receive payments no later than January 1, 2005.
6. Repeal the requirement for VA's Under Secretary for Health to be a medical doctor.

BACKGROUND AND DISCUSSION

Pilot Program to study innovative recruitment tools to address nursing shortages at Department of Veterans Affairs Health-Care Facilities.—The Department of Veterans Affairs health care system maintains about 1,300 facilities staffed by more than 180,000 employees. The Veterans Health Administration (VHA) would rank among the top 25 largest employers as defined in *Hoover's Handbook of American Business*. VHA has more employees, for example, than Blue Cross-Blue Shield, the Kaiser Foundation Health Plan, and Manor Care, Inc. and is the largest employer of nurses in this country. The nursing staff comprises the largest group of employees within VHA, totaling about 58,000 or 32 percent of its employees.

Maintaining an adequate supply of nurses is critical to caring for the increasing number of veterans seeking VA health care. Today, about 7.6 million veterans are enrolled in VA health care and in 2010 it is estimated that this number will grow to approximately

8.4 million. As demand for VA health care is rising, VA's nurse vacancy rates are increasing. Mr. Thomas J. Hogan, VA's Deputy Assistant Secretary for Human Resources Management, testified on May 6, 2004 before the Subcommittee on Health that the VA nurse vacancy rate is currently 9 percent and VA is in need of hiring in excess of 4,500 nurses. A VA report in September 2003 found that the average VA nurse was 48.9 years old, exceeding the national average age of 41.8.

In order to address the human capital challenges in VA, the Department needs better tools and strategies to plan, attract, assess, hire and manage its recruitment process for nurses. In 2002, Public Law 107-135, the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, established the National Commission on VA Nursing. The Commission was charged, among other matters, to recommend organizational and legislative changes that would enhance VA's recruitment and retention of nurses. The Commission's final report was released on May 13, 2004. Among the recommendations was that "VHA should strengthen human resources systems and departments to develop an active hiring and recruiting process for nursing staff that is consistent, to the extent possible, across facilities and VISNs."

VHA should adopt the best practices of private industry in recruiting nurses and other essential personnel. In the private sector, human resources professionals have developed and are successfully using internet-based recruitment tools, but VA's use of such tools is limited and ineffective. Forrester Research, Inc., an independent technology research company that provides advice about technology's impact on business, recently reported on the internet that 100 percent of Fortune 500 companies are now using online recruiting (www.forrester.com).

The Committee bill would establish a pilot program to use outside recruitment, advertising, communication agencies and use interactive and online technologies for recruiting nursing personnel to test whether such tools would enhance VA's recruitment of nurses to fill Department vacancies. The legislation would require a report of the extent to which the pilot program achieves this goal. The Committee expects that the report would analyze whether: employment vacancies are posted faster and in real time; more qualified candidates are reached; organizing, screening and comparing skills of qualified candidates are more effective; employment applications are received and processed faster; the amount of time to hire an employee is reduced as soon as the vacancy is announced; the Department's visibility as a desirable employer is improved; the Department's workforce diversity is expanded; and the hiring process is more efficiently managed.

Alternative work schedules for nurses.—On July 18, 2003, VA made a legislative proposal to Congress that included three new alternative duty schedules for full-time VA nurses. The letter accompanying the proposal cited an American Organization of Nurse Executives survey, which found that a major cause of dissatisfaction in the nursing workforce is the inflexibility of work schedules. The Committee bill would authorize VA to offer the three new alternative duty schedules for nurses that are comparable to work schedules commonly offered in the private sector. The first option would allow a nurse to work three regularly scheduled 12-hour

tours of duty within a workweek (a total of 36 hours) to be paid as having worked 40 hours. The second option would allow a nurse, who works seven regularly scheduled 10-hour tours of duty with seven days off duty within a two-week pay period, to be considered to have worked a full 80 hours for the pay period. The third option would allow a nurse to work full-time for nine months with three months off duty within a year, with pay apportioned over the 12-month period. These options accommodate the need of nurses to have more control over their schedules and improve VA's ability to retain them in a career status.

Appointment of nurses who do not have baccalaureate degrees.—VA's qualification standards define the education requirements for a Registered Nurse (RN) to be appointed to one of five grade levels in VA. Under these standards, all new RN appointees must present a baccalaureate degree in nursing (BSN) to be appointed above the "Nurse I" grade level.

In April 2003, the National Commission on VA Nursing held public hearings in New Orleans, Philadelphia, Chicago and Long Beach. Nurses' testimony at those hearings repeatedly indicated that VA's appointment and promotion policy discourages nurses with associate degrees in nursing and those with diplomas from hospital schools of nursing from seeking VA employment because it qualifies nurses with significant experience and clinical expertise for appointment only at the Nurse I level (the lowest pay level) under the qualification standards.

Several educational paths are available for licensed registered nurses. In 2002, enrollment in associate degree nursing programs nationwide increased by 16 percent compared to an eight percent increase in enrollment in baccalaureate nursing programs. The American Association of Community Colleges (AACCC) reports that 62 percent of employed staff nurses, including 45 percent in nurse clinician positions, 42 percent in clinical nurse specialist positions, 52 percent in head nurse positions and 65 percent in nurse supervisor positions received their nursing educational preparation through associate degree or diploma nursing programs. In VA, however, the nursing employment picture is quite different from the national norm. Almost 59 percent of VA's nurses possess bachelors or higher degrees, but only 41 percent have associate degrees or diplomas.

All nursing graduates must pass uniform licensing board examinations administered by individual States to become registered nurses. Once licensed, registered nurses are authorized to provide the identical scope of practice under State law, without regard to their particular educational preparation. Possession of the BSN degree does not expand the RN's patient care responsibilities under any State law. A recent report by the National Council of State Boards of Nursing indicates that associate-degree nurses' success rates in passing State board examinations are virtually identical to those with baccalaureate degrees taking the same examinations.¹

Dr. Andrea Mengel, Head, Department of Nursing, Community College of Philadelphia, representing the American Association of

¹ Crawford L, Marks C, Gawel S, White E, Obichere L. 2001. 2000 Licensure and Examinations Statistics: National Council of State Boards of Nursing, Inc.

Community Colleges, testified before the Subcommittee on Health on May 6, 2004, that:

Nursing practice outside of the VHA is a better career choice for the well-educated, high quality, and often experienced who earned their degrees at community colleges. With hundreds of choices of workplace opportunities, why would new RN graduates from associate degree programs choose to work at the VHA where the hiring and promotion policy will hold them back? Community colleges across the nation report that their graduates are not choosing the VHA. For example, not one of 300 RNs who graduated from Community College of Philadelphia in the past four years chose to work in the VA.

Additionally, at the same hearing, Dr. Linda S. Schwartz, Commissioner of the Connecticut Department of Veterans Affairs, stated that:

You have put me in a hard place, though, because I also served on the board of directors of the American Nurses Association, which you know promotes the baccalaureate degree. But these are tough times and 20 years ago I came before the committee to talk about the nursing shortage and we are back again. And the reality of all of this is the largest producers of nursing, who qualify as nurses and follow licensure, are in the associate degree programs. And, so I would just ask the rhetorical question, which is better, no nurse or a nurse from an associate degree program? And to me the answer is a nurse from an associate degree program because many nurses are very, very determined to go on to get their baccalaureate degree and to go on to higher studies.

The Committee is concerned that in the midst of a nationwide shortage of registered nurses, VA is losing opportunities to bring experienced, qualified nurses into VA health care because of its overemphasis on basic educational preparation rather than a more balanced policy that also considers experience and expertise. A 2001 study published in the *Journal of Nursing Administration* found that the experience levels of nurses, rather than education alone, accounted for lower rates of adverse events.² The Committee bill would clarify that VA cannot deny employment consideration to a qualified registered nurse solely due to the lack of a baccalaureate degree in nursing.

Correction to listing of certain hybrid positions in Veterans Health Administration.—Under current law, VA has three separate authorities to employ hospital and clinical staff based on the functions and duties the employee performs. Critical care staffs such as physicians and nurses are employed under a unique authority to VA contained in chapter 74 of title 38, United States Code. In addition to title 38 employees, VA employs some clinical staff under traditional civil service authorities specified in title 5. A third group of VA clinical staff is employed under a system known as

²Blegen M, Vaughn T, Goode C. 2001. Nurse experience and education: effect on quality of care. *Journal of Nursing Administration* 31(1):33–9.

“hybrid title 38” status. The hybrid title 38 positions were developed to merge certain characteristics of the title 38 and title 5 hiring and compensation benefits. The hybrid title 38 authority allows employees to be hired more quickly, receive special pay rates and promotions based on individual qualifications and peer review, as contained in title 38 for other direct-care professions. However, these employees are also entitled to the same grievance, annual leave and other benefits and protections afforded to title 5 employees. The Committee bill would make technical corrections to the listing of hybrid title 38 positions from Public Law 108–170 by replacing the term “dental technologists” with the terms “dental hygienists” and “dental assistants”, by replacing the term “technicians” with the term “technologists”, and by replacing the term “therapeutic radiologic technicians” with the term “therapeutic radiologic technologists.” This bill would also add blind rehabilitation specialists and blind rehabilitation outpatient specialists to the hybrid category.

Assistance for hiring and retention of nurses at State veterans homes.—Over the past five years, the veteran population most in need of nursing home care, those veterans 85 years or older, has increased more than 100 percent, growing from about 387,000 in fiscal year 1998 to 870,000 in fiscal year 2003. This veteran population is expected to continue to rise to about 1.3 million by mid-decade. Now the largest provider of long-term care to veterans, the State veterans’ home system plays a vital role. Currently, there are over 38,000 veterans cared for in 128 State veterans’ homes.

The Department of Health and Human Services (HHS) commissioned a survey, released in November 2002 by the Center for Health Workforce Studies, School of Public Health, University at Albany, State University of New York, to learn how States are responding to needs for health care workers. Ninety percent of the States reported a shortage of nursing staff as a major concern and 44 of 50 States reported establishing task forces and commissions to study and seek solutions to health care work force shortages. In 25 of these States, the focus of the task forces or commissions was to study shortages in the long-term care work force.

The Committee bill would authorize VA to make payments to States for the purpose of assisting State veterans’ homes in hiring and retaining nurses to care for veterans. State homes that currently receive per diem payments from VA and have established employee incentive programs would be eligible to apply for incentive assistance and could receive up to 50 percent of the annual cost of such a program.

Under Secretary for Health.—Current law requires the Under Secretary for Health to be a “doctor of medicine,” restricting the pool of candidates that may be considered by the President for nomination to the position. Senior executives in the health care industry who may have exceptional credentials and experience, but who are not doctors of medicine, are excluded from consideration.

The Committee bill would repeal the requirement for VA’s Under Secretary for Health to be a medical doctor and allow the Secretary flexibility to nominate candidates with demonstrated abilities to fill this key position from the widest spectrum of talents.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would name this Act the “Department of Veterans Affairs Nurse Recruitment and Retention Act of 2004”.

Section 2(a) of the bill would establish a pilot program within a health-care region adversely affected by a shortage of nurses and would require the Secretary to enter into a contract with a private-sector entity for services under the pilot program to determine the effectiveness of the use of innovative private-sector recruiting practices to place qualified nurses in vacant positions at Department health-care facilities.

Section 2(b) of the bill would require the Secretary for purposes of the pilot program established under this section to identify and use proven effective recruitment practices for placing individuals in difficult to fill positions including employer branding and interactive advertising strategies; internet technologies and automated staffing systems; and recruitment, advertising and communication agencies.

Section 2(c) of the bill would require the Secretary in carrying out the pilot program established under this section to streamline systems and procedures used in the hiring process at sites where the pilot program is conducted and, if necessary, to make recommendations to amend the law.

Section 2(d) of the bill would require the Secretary to submit a report to the Committees on Veterans Affairs on the extent to which the pilot program achieved the goal of improving the recruitment and retention of nurses in VA health-care facilities.

Section 3(a) of the bill would amend chapter 74 of title 38, United States Code, to add a new section 7456a to provide for alternative work schedules for nurses.

New section 7456a(a) would specify that this section applies to registered nurses under chapter 74.

New section 7456a(b)(1) would provide the Secretary discretionary authority for chapter 74 nurses to work three regularly scheduled 12-hour tours of duty within a workweek, and for such tour to be considered for all purposes a full 40-hour basic workweek (a “36/40” work schedule) except for the purposes of determining compliance with personnel ceilings.

New section 7456a(b)(2) would provide the formula for determining the hourly rate and set forth rules for overtime pay for a nurse who work a 36/40 work schedule described in new section 7456a(b)(1).

New section 7456a(b)(3) would provide the formula for determining charged leave for a nurse who works a 36/40 work schedule described in new section 7456a(b)(1).

New section 7456a(c)(1) would provide the Secretary discretionary authority for chapter 74 nurses to work seven regularly scheduled 10-hour tours of duty, with seven days off duty, within a two-week pay period and for such tour to be considered for all purposes a full 80-hour pay period (a “7/7” work schedule) except for the purposes of determining compliance with personnel ceilings.

New section 7456a(c)(2) would provide the formula for determining the hourly rate and set forth rules for overtime pay for a

nurse who works a 7/7 work schedule described in new section 7456a(c)(1).

New section 7456a(c)(3) would provide the formula for determining charged leave for a nurse who works a 7/7 work schedule described in section 7456(c)(1).

New section 7456a(d) would provide the Secretary discretionary authority for chapter 74 nurses to work full-time for 9 months with 3 months off within a fiscal year and be paid at 75 percent of the full-time rate over the full 12-month period (a “9 month” work schedule); be considered .75 full-time equivalent employees; and be considered part-time service for purposes of computing retirement benefits.

New section 7456a(e) would direct the Secretary to prescribe regulations to implement new section 7456a(d).

Section 3(b) of the bill would amend the table of sections at the beginning of chapter 74, United States Code, to add the following new item: “7456a. Alternate work schedules.”

Section 4 of the bill would amend section 7403 of title 38, United States Code, so that a registered nurse applying for a VA appointment and presenting the established qualifications for employment may not be denied appointment on the basis of the lack of a baccalaureate degree in nursing.

Section 5 of the bill would amend section 7401(3) of title 38, United States Code, to modify VA authority to make direct appointments of certain personnel to include blind rehabilitation specialists and blind rehabilitation outpatient specialists.

Section 6(a)(1) of the bill would amend chapter 17 of title 38, United States Code, to add a new section 1744 to authorize the Secretary to provide assistance to States for the purpose of hiring and retaining nurses at State veterans homes.

New section 1744(a) would authorize the Secretary to make payments to States for the purpose of assisting State homes in the hiring and retention of nurses.

New section 1744(b) would make eligible for such assistance State homes that receive per diem payments under chapter 17, subchapter V for the care of veterans for that fiscal year, and that have in effect an employee incentive scholarship or other program designed to promote the hiring and retention of nursing staff and reduce nursing shortages.

New section 1744(c) would require States to use funds received under new section 1744 only to provide funds for a program described in new section 1744(b).

New section 1744(d) would limit a payment under new section 1744 to no more than 50 percent of the fiscal year costs of a program described in new section 1744(b).

New section 1744(e) would require a State seeking payment with respect to any State home to submit an application and set forth requirements for that application.

New section 1744(f-h) would set forth requirements for the source of funds, disbursement of funds and use of payments under new section 1744.

New section 1744(i) would require any State home receiving a payment under new section 1744 for any fiscal year, within 60 days

of the close of the fiscal year, to submit a report on the use of funds received through the payment.

New section 1744(j) would direct the Secretary to prescribe regulations for the implementation of new section 1744.

Section 6(a)(2) of the bill would amend the table of sections at the beginning of chapter 17, United States Code, to add the following new item: "1744. Hiring and retention of nurses: payments to assist States."

Section 6(b) of the bill would require the Secretary to implement new section 1744 as expeditiously as possible, so that payments are made to eligible States commencing no later than January 1, 2005.

Section 7 of the bill would amend section 8111(d)(2) of title 38, United States Code, to add that the established DOD-VA Health Care Sharing Incentive Fund is available for any purpose authorized by section 8111.

Section 8 of the bill would amend section 305(a)(2) of title 38, United States Code to strike the requirement that the Under Secretary for Health be a doctor of medicine.

PERFORMANCE GOALS AND OBJECTIVES

The Department of Veterans Affairs' performance goals and objectives are established in annual performance plans and are subject to the Committee's regular oversight and evaluation by the U.S. General Accounting Office. VA also publishes a performance and accountability report for each fiscal year.

STATEMENT OF THE VIEWS OF THE ADMINISTRATION

Statement of The Honorable Gordon H. Mansfield, Deputy Secretary of Department of Veterans Affairs, before the Subcommittee on Health, Committee on Veterans Affairs, U.S. House of Representatives

May 6, 2004

H.R. 4231

This bill would help make VA more competitive in its ongoing efforts to recruit and retain registered nurses. I am especially pleased that the bill includes VA's proposal allowing enhanced flexibility in scheduling tours of duty for registered nurses. Mr. Chairman, in testimony last Fall before this Committee, we noted the projected increase in the number of aging veterans and increased enrollment in the VA healthcare system by veterans of all ages over the next several years and the projected national shortage of registered nurses. VA's health care providers are its most important resource in delivering high-quality, compassionate care to our Nation's veterans. VA's nurses are critical front-line components of the VA health care team. We must be able to recruit and retain well-qualified nurses. The ability to offer compensation, employment benefits and working conditions comparable to those available in their community is critical to our ability to recruit and retain nurses, particularly in highly competitive labor markets and for hard-to-fill specialty assignments. Thanks to the efforts of this Committee and the Senate Veterans' Affairs Committee, VA has been able to offer generally competitive pay for nurses in most markets. VA continuously monitors the recruitment and retention of health care providers, particularly nurses, monitoring trends in private sector employment and workforce projections.

VA generally supports H.R. 4231 as it will assist VA in meeting the increasing challenge of recruiting and retaining sufficient nurses to meet its patient care needs.

Section 3 of H.R. 4231 adopts a VA proposal for enhanced flexibility in scheduling tours of duty for registered nurses. VA strongly supports this provision. This provision will help VA remain a competitive place of employment for nurses and to meet current and future veteran healthcare needs.

Your bill would also establish a pilot program to study innovative recruitment tools to address nursing shortages at VA health-care facilities, to be carried out in

a region adversely affected by a nursing shortage. Using the services of a contractor, VA would identify and implement proven private sector recruitment practices. Such practices would include employer branding and interactive advertising strategies; internet technologies and automated staffing systems; and the use of recruitment, advertising and communication agencies. In carrying out the pilot program, the bill would require VA to streamline hiring procedures. If necessary, VA would be required to submit proposed legislation. Within one year, VA is to report to the House and Senate Veterans' Affairs committees on the pilot program. VA is already undertaking numerous initiatives to improve nurse recruitment and retention. Some of the aspects of the bill appear duplicative of these initiatives. Therefore, we believe this proposal is unnecessary.

H.R. 4231 also would amend section 7403 of title 38 to provide that a registered nurse who applies for appointment and who meets VA's qualification standards may not be denied appointment based on the fact that such nurse does not have a baccalaureate degree. VA believes this proposal is unnecessary.

The lack of a baccalaureate degree is not a bar to appointment under VA's current qualification standards. We note that we have provided the Committee with information that VA currently employs and continues to appoint many nurses educated in diploma and associate degree programs. VA hires graduates of associate degree and diploma programs at the Nurse I grade, and graduates of associate degree and diploma programs with bachelor degrees in related fields are eligible for appointment and promotion to the Nurse II grade, the same grade as are nurses with a Bachelor of Science in Nursing (BSN). In addition, VHA provides financial support to nurses desiring to obtain a higher nursing degree. VA does not "deny" appointment based on the lack of a baccalaureate degree.

Finally, section 5 is a technical amendment to correct the titles of some of the new hybrid occupations, and adds additional occupations to those converted. Public Law number 108-170 converted a number of additional VHA health care positions to hybrid status. This section would substitute "dental hygienists" and "dental assistants" for "dental technologists", and would substitute "technologists" for "technicians" and therapeutic radiologic technologists" for therapeutic radiologic technicians". VA supports the clarification of the occupations converted to hybrid status. In addition, this section would convert blind rehabilitation specialists and blind rehabilitation outpatient specialists to hybrid status. VA is currently reviewing the need for additional hybrid positions and, therefore, cannot comment on this proposal at this time.

H.R. 4020

H.R. 4020 would add a new section to title 38, United States Code, to require VA to make payments to States to assist them in hiring and retaining nurses at State veterans homes. To receive these payments, a State would need to establish an employee incentive scholarship program or other a similar program designed to reduce nursing shortages at its State homes. The programs would also need to meet any criteria that VA prescribes by regulation. VA would contribute 50% of the actual cost of the State program, but limited to 2% of the total per diem payments that the State would receive for that home for any fiscal year. States would be required to submit reports to VA on their use of the funds and the effectiveness of their programs.

VA opposes this proposal. This bill would require VA to make these payments from the Medical Services appropriations account. We estimate this bill could cost about \$8.2 million per year. These funds would be taken from medical care programs for veterans. VA already pays States a per diem for the care of each veteran. These payments are intended to help cover all the costs of operating State homes including those involved in nurse recruitment. In times of fiscal constraint, we do not believe this additional grant to state homes at the expense of VA's own medical programs can be justified.

Draft Bill re Qualifications and Selection of Under Secretary for Health

This draft bill would amend section 305 of title 38, which concerns the procedures for appointment and qualifications of the Under Secretary for Health. As currently written, section 305 requires that the Under Secretary be a physician. The proposal would delete that requirement and substitute in its stead a requirement that the Under Secretary have executive knowledge, skill and ability. It would require that such knowledge, skill and ability be in health care administration, policy formulation and financial management. The draft bill also would eliminate the current four-year term for that position, and the current search commission process utilized to recommend candidates to the President for vacancies. Instead, the Secretary would be required to conduct a search for candidates and make a recommendation to the President. In conducting the search, the Secretary would be required to "consult"

with stakeholders similar to those required to be on the search commission under the current procedure.

VA supports enactment of these amendments as an improvement over current law, but we believe that the best outcome would be to amend section 305 to provide simply that the Under Secretary is appointed by the President, by and with the advice and consent of the Senate, and that the Under Secretary shall supervise the Veterans Health Administration under the authority of the Secretary of Veterans Affairs. The VHA medical system is the largest in the world, with 158 hospitals, more than 850 ambulatory care and community-based outpatient clinics, 132 nursing homes, 42 domiciliaries, 73 comprehensive home-care programs, 21 service networks and 206 Vet (Readjustment Counseling) Centers. More than 4.8 million people received care in VA health care facilities in 2003, with nearly 600,000 inpatient admissions and approximately 49.8 million outpatient visits.

VHA also manages the largest medical education and health professions training program in the United States. VHA facilities are affiliated with 107 medical schools, 55 dental schools and more than 1,200 other schools across the country. Each year, about 81,000 health professionals are trained in VHA medical centers. More than half of the physicians practicing in the United States have had part of their professional education in the VA health care system.

VA's medical system additionally serves as a backup to the Department of Defense during national emergencies and as a federal support organization during major disasters.

Moreover, VHA has experienced unprecedented growth in the medical system workload over the past few years. The number of patients treated increased by nearly seven percent from 2002 to 2003.

Because of the complexity, size and scope of VHA's operations, the person who heads VHA first and foremost must be someone with significant executive leadership ability and a demonstrated track record. The President should not be limited to appointing a physician to this critical leadership position, but should be able to appoint the person with those executive qualifications that best meets the needs of VHA.

We also favor the proposal to replace the formalized Search Commission process with a less-formal search process. The Search Commission process has proven to be very cumbersome and very slow. Importantly, the less-formal search process would retain stakeholder's involvement on a consultative basis. This proposal would allow the President to fill a vacant Under Secretary position in a more expeditious manner, without sacrificing important stakeholder input.

Finally, we note that the Subcommittee has inserted as section 2 of the draft bill a technical amendment to section 8111(d)(2) of title 38 to clarify the purposes for which the DOD-VA Health Care Sharing Incentive Fund may be used. The amendment would add at the end "and shall be available for any purpose authorized by this section". We thank the Subcommittee for this and strongly concur with this provision.

* * * * *

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 9, 2004

Hon. CHRISTOPHER H. SMITH
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4231, the Department of Veterans Affairs Nurse Recruitment and Retention Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sam Papenfuss, who can be reached at 226-2840.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director

Enclosure.



**CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE**

June 9, 2004

**H.R. 4231
Department of Veterans Affairs Nurse Recruitment
and Retention Act of 2004**

*As ordered reported by the House Committee on Veterans' Affairs
on May 19, 2004*

SUMMARY

H.R. 4231 contains several provisions that would affect nurses hired by the Department of Veterans Affairs (VA). It would allow VA nurses to work alternate work schedules that would be treated as the equivalent of full-time work, even though total hours worked by the nurses would be less than 40 hours per week. In addition, the bill would allow VA to make additional payments to state homes to help fund programs that are designed to recruit and retain nurses at these facilities. Finally, the bill would require VA to implement a pilot program in one region of the country that would require VA to use an outside agency for advertising and job searches for hiring VA nurses.

CBO estimates that implementing H.R. 4231 would cost \$33 million in 2005 and \$307 million over the 2005-2009 period, assuming appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues.

H.R. 4231 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4231 is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

| | By Fiscal Year, in Millions of Dollars | | | | | |
|---|--|--------|--------|--------|--------|--------|
| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
| SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Spending Under Current Law for Veterans' Medical Care | | | | | | |
| Estimated Authorization Level ^a | 27,957 | 28,888 | 29,706 | 30,608 | 31,117 | 32,104 |
| Estimated Outlays | 27,141 | 28,334 | 29,293 | 30,210 | 30,846 | 31,756 |
| Proposed Changes | | | | | | |
| Alternative Work Schedules for Nurses | | | | | | |
| Estimated Authorization Level | 0 | 28 | 57 | 59 | 61 | 63 |
| Estimated Outlays | 0 | 25 | 54 | 58 | 60 | 62 |
| Assistance for State Nursing Homes | | | | | | |
| Estimated Authorization Level | 0 | 8 | 8 | 9 | 9 | 9 |
| Estimated Outlays | 0 | 7 | 8 | 9 | 9 | 9 |
| Pilot Program for Nurse Recruitment | | | | | | |
| Estimated Authorization Level | 0 | 1 | 1 | 1 | 1 | 2 |
| Estimated Outlays | 0 | 1 | 1 | 1 | 1 | 2 |
| Total Changes | | | | | | |
| Estimated Authorization Level | 0 | 37 | 66 | 69 | 71 | 74 |
| Estimated Outlays | 0 | 33 | 63 | 68 | 70 | 73 |
| Spending for Veterans' Medical Care Under H.R. 4231 | | | | | | |
| Estimated Authorization Level ^a | 27,957 | 28,925 | 29,772 | 30,677 | 31,188 | 32,178 |
| Estimated Outlays | 27,141 | 28,367 | 29,356 | 30,278 | 30,916 | 31,829 |

a. The 2004 level is the estimated net amount appropriated for that year. No full-year appropriation has yet been provided for fiscal year 2005. The current-law amounts for the 2005-2009 period assume appropriations at the 2004 level with adjustments for anticipated inflation.

BASIS OF ESTIMATE

This estimate assumes that the bill will be enacted near the start of fiscal year 2005 and that the necessary amounts for implementing the bill will be appropriated for each year.

Alternative Work Schedules for Nurses

Under section 3, VA would have the authority to treat nurses who work three regularly scheduled 12-hour shifts within one workweek as having worked a full 40 hours during that week. In a similar manner, VA also would have the authority to treat nurses who work seven regularly scheduled 10-hour shifts within a two-week pay period as having worked 80 hours during that period. Under the bill, nurses would still be paid as if they had worked 40 hours, despite working less than 40 hours while on these alternative schedules. Under current law, VA cannot allow nurses who work these schedules to be treated as if they are working 40 hours a week.

Based on information from VA, CBO expects that VA would allow about 6,500 nurses to use these alternative work schedules, with about 4,100 working under the three 12-hour shifts schedule and the rest working under the seven 10-hour shifts schedule. Because these nurses would be working fewer hours each week, CBO expects that VA would likely have to hire additional personnel to cover the remaining work load. Based on the estimated decrease in total hours worked, CBO estimates that VA would need to hire about 700 additional nurses at an estimated annual cost of about \$78,000 per nurse in 2005. Assuming it takes about six months for VA to begin using this authority and that annual salaries increase with inflation, CBO estimates that implementing section 3 would cost \$25 million in 2005 and \$259 million over the 2005-2009 period, assuming appropriation of the necessary amounts.

Assistance for State Nursing Homes

Under current law, VA makes payments to states that have state homes that provide long-term care to veterans. Section 6 would require VA to make additional payments to those states that have employee incentive scholarship programs or other incentive programs designed to help the state homes recruit and retain nurses. The bill would limit the amount the VA could pay the states for these new programs to 2 percent of the payments it makes to state homes for the long-term care of veterans—about \$400 million in 2004, according to VA. Thus, CBO estimates that implementing this provision would cost about \$7 million in 2005 and \$42 million over the 2005-2009 period, assuming appropriation of the estimated amounts.

Pilot Program for Nurse Recruitment

Section 2 would require VA to hire an outside agency to implement a pilot program designed to increase recruitment and advertising for nurses in a region where VA has had difficulties in recruiting and retaining qualified nurses. VA has not yet provided information as to how it would implement this pilot program. Assuming that VA implements this pilot program in a region with three hospitals and spends about 1 percent of its compensation budget for nurses for this program, CBO estimates that implementing this pilot program would cost about \$1 million in 2005 and \$6 million over the 2005-2009 period, assuming appropriation of the estimated amounts.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4231 contains no intergovernmental or private-sector mandates as defined in UMRA. States currently receive reimbursements from the Department of Veterans Affairs for certain costs related to care of veterans in state facilities. This bill would expand those eligible activities to include programs to recruit and retain nurses in such facilities; any costs incurred by those governments would be voluntary.

ESTIMATE PREPARED BY:

Federal Costs: Sam Papenfuss (226-2840)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225-3220)
Impact on the Private Sector: Allison Percy (226-2900)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

STATEMENT OF FEDERAL MANDATES

The preceding Congressional Budget Office cost estimate states that the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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):

TITLE 38, UNITED STATES CODE

PART I—GENERAL PROVISIONS

* * * * *

CHAPTER 3—DEPARTMENT OF VETERANS AFFAIRS

* * * * *

§ 305. Under Secretary for Health

(a)(1) * * *

(2) The Under Secretary for Health [shall be a doctor of medicine and] shall be appointed without regard to political affiliation or activity and solely—

(A) on the basis of demonstrated ability in the medical profession, in health-care administration and policy formulation, [and in health-care] or in health-care fiscal management; and

* * * * *

PART II—GENERAL BENEFITS

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CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER I—GENERAL

Sec. 1701. Definitions.

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SUBCHAPTER V—PAYMENTS TO STATE HOMES

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

SUBCHAPTER V—PAYMENTS TO STATE HOMES

* * * * *

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

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

(b) *ELIGIBLE RECIPIENTS.*—*Payments to a State for a fiscal year under this section shall, subject to submission of an application, be made to any State that during that year—*

(1) *receives per diem payments under this subchapter for that fiscal year; and*

(2) *has in effect an employee incentive scholarship program or other employee incentive program at a State home designed to promote the hiring and retention of nursing staff and to reduce nursing shortages at that home.*

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

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

(2) *The amount of the payment to a State under this section for any fiscal year is, for each State home in that State with a program described in subsection (b)(2), the amount equal to 2 percent of the amount of payments estimated to be made to that State, for that State home, under section 1741 of this title for that fiscal year.*

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

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

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

(h) *USE OF CERTAIN RECEIPTS.*—*The Secretary shall require as a condition of any payment under this section that, in any case in*

which the State home receives a refund payment made by an employee in breach of the terms of an agreement for employee assistance that used funds provided under this section, the payment shall be returned to the State home's incentive program account and credited as a non-Federal funding source.

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

(j) *REGULATIONS.*—The Secretary shall prescribe regulations to carry out this section. The regulations shall include the establishment of criteria for the award of payments under this section.

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PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

* * * * *

CHAPTER 74—VETERANS HEALTH ADMINISTRATION—PERSONNEL

SUBCHAPTER I—APPOINTMENTS

Sec.
7401. Appointments in Veterans Health Administration.
* * * * *

SUBCHAPTER IV—PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

7451. Nurses and other health-care personnel: competitive pay.
* * * * *
7456a. Alternate work schedules.
* * * * *

SUBCHAPTER I—APPOINTMENTS

§ 7401. Appointments in Veterans Health Administration

There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the Office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

- (1) * * *
- * * * * *

- (3) Audiologists, speech pathologists, and audiologist-speech pathologists, biomedical engineers, certified or registered res-

piratory therapists, dietitians, licensed physical therapists, licensed practical or vocational nurses, medical instrument technicians, medical records administrators or specialists, medical records technicians, medical [and dental technologists] *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 [technicians, therapeutic radiologic technicians, and social workers] *technologists, therapeutic radiologic technologists, social workers, blind rehabilitation specialists, and blind rehabilitation outpatient specialists.*

* * * * *

§ 7403. Period of appointments; promotions

(a)(1) * * *

* * * * *

(h) In a case in which a registered nurse applying for an appointment under this chapter as a registered nurse has presented the qualifications established under subsection (a) for such an appointment, the lack of a baccalaureate degree in nursing shall not be a bar to appointment, and in such a case the registered nurse shall not be denied appointment on that basis.

* * * * *

SUBCHAPTER IV—PAY FOR NURSES AND OTHER HEALTH-CARE PERSONNEL

* * * * *

§ 7456a. Alternate work schedules

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

(b) 36/40 WORK SCHEDULE.—(1) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at a Department health-care facility, the Secretary may provide, in the case of registered nurses employed at that facility, that such a nurse who works three regularly scheduled 12-hour tours of duty within a workweek 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. Such a schedule may be referred to as a “36/40 work schedule”.

(2)(A) Basic and additional pay for a registered nurse who is considered under paragraph (1) to have worked a full 40-hour basic workweek is subject to subparagraphs (B) and (C).

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

(C)(i) Such a nurse who performs a period of service in excess of such nurse’s regularly scheduled 36-hour tour of duty within a

workweek 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—

(I) eight hours on a day other than a day on which such nurse's regularly scheduled 12-hour tour falls;

(II) 12 hours for any day included in the regularly scheduled 36-hour tour of duty; and

(III) 40 hours during an administrative workweek.

(ii) Except as provided in clause (i), a registered 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.

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

(c) 7/7 Work Schedule—(1) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at a Department health-care facility, the Secretary may provide, in the case of registered nurses employed at such facility, that such a nurse who works seven regularly scheduled 10-hour tours of duty, with seven days off duty, within a two-week pay period, 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 80 hours for the pay period. Such a schedule may be referred to as a "7/7 work schedule".

(2)(A) Basic and additional pay for a registered nurse who is considered under paragraph (1) to have worked a full 80-hour pay period is subject to subparagraphs (B) and (C).

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

(C)(i) Such a nurse who performs a period of service in excess of such nurse's regularly scheduled 70-hour tour of duty within a pay period 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—

(I) eight hours on a day other than a day on which such nurse's regularly scheduled 10-hour tour falls;

(II) 10 hours for any day included in the regularly scheduled 70-hour tour of duty; and

(III) 80 hours during a pay period.

(ii) Except as provided in subparagraph (i), a registered 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 10-hour tour of duty.

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

(d) 9-MONTH WORK SCHEDULE.—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 three 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 that fiscal year. A nurse working on such a schedule for any fiscal year shall be considered a ³/₄ full-time equivalent employee for that fiscal year in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings. Service on such a schedule shall be considered to be part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

(e) REGULATIONS.—The Secretary shall prescribe regulations for the implementation of this section.

* * * * *

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

* * * * *

SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

* * * * *

§ 8111. Sharing of Department of Veterans Affairs and Department of Defense health care resources

(a) * * *

* * * * *

(d) JOINT INCENTIVES PROGRAM.—(1) * * *

(2) To facilitate the incentive program, effective October 1, 2003, there is established in the Treasury a fund to be known as the “DOD–VA Health Care Sharing Incentive Fund”. Each Secretary shall annually contribute to the fund a minimum of \$15,000,000 from the funds appropriated to that Secretary’s Department. Such funds shall remain available until expended and shall be available for any purpose authorized by this section.

* * * * *