Public Law 94-123
94th Congress

An Act

To amend title 38, United States Code, to provide special pay and incentive pay for certain physicians and dentists employed by the Department of Medicine and Surgery of the Veterans' Administration in order to enhance the recruitment and retention of such personnel, and for other purposes.

Oct. 22, 1975
[H.R. 8240]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Veterans' Administration Physician and Dentist Pay Comparability Act of 1975".

Veterans' Administration Physician and Dentist Pay Comparability Act of 1975.

SEC. 2. (a) The Congress hereby finds and declares (1) that the ceiling on the salary of physicians employed in the Department of Medicine and Surgery due to the Federal salary limitation under the Executive Schedule rates of pay in title 5, United States Code, accompanied by the sharp escalation in the cost of living since those rates of pay were last increased in 1969, has seriously impaired the recruitment and retention of qualified physicians by the Department of Medicine and Surgery in the Veterans' Administration; and (2) that the compensation provided to physicians and dentists in the Department of Medicine and Surgery has been rendered noncompetitive by virtue of the payment of special pay of up to $13,500 per annum, in addition to basic compensation and other benefits, to certain medical officers, and monthly special and continuation pay cumulating approximately half such amount to certain dental officers, of the uniformed services, pursuant to title 37 of the United States Code and Public Law 93-274. The Congress further finds and declares that these recruitment and retention difficulties have created an inequitable and demoralizing situation in the Department of Medicine and Surgery that threatens to erode seriously the ability of the Department to compete for the services of necessary health care professionals and thereby to continue to provide quality health care to eligible veterans.

38 USC 4118 note.
38 USC 4118 note.
5 USC 5311.
37 USC 101 *et seq.*
37 USC 302 note.

(b) Section 4107 of title 38, United States Code, is amended by—

38 USC 4107.

(1) striking out the comma and "other than Chief Medical Director and Deputy Chief Medical Director," after "title" in the first sentence of subsection (a);

(2) striking out in subsection (a) the following:

"Associate Deputy Chief Medical Director, at the annual rate provided in section 5316 of title 5 of the United States Code for positions in level V of the Executive Schedule.

"Assistant Chief Medical Director, $41,734.

"Medical Director, $36,103 minimum to $40,915 maximum."

and inserting in lieu thereof the following:

"Chief Medical Director, $54,000.

"Deputy Chief Medical Director, $52,000.

"Associate Deputy Chief Medical Director, $50,000.

"Assistant Chief Medical Director, $48,654.

"Medical Director, $42,066 minimum to $47,674 maximum.";

(3) amending the Physician and Dentist Schedule in section (b)(1) to read as follows:

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"PHYSICIAN AND DENTIST SCHEDULE

"Director grade, $36,338 minimum to $46,026 maximum.
"Executive grade, $33,736 minimum to $43,861 maximum.
"Chief grade, $31,309 minimum to $40,705 maximum.
"Senior grade, $26,861 minimum to $34,916 maximum.
"Intermediate grade, $22,906 minimum to $29,782 maximum.
"Full grade, $19,386 minimum to $25,200 maximum.
"Associate grade, $16,255 minimum to $21,133 maximum."; and

(4) amending subsection (d) to read as follows:

Infra.

"(d) Notwithstanding any other provision of law, and except as provided in section 4118 of this title, pay may not be paid at a rate in excess of the rate of basic pay for an appropriate level authorized by section 5314, 5315, or 5316 of title 5 for positions in the Executive Schedule, as follows:

5 USC 5314–5316.

"(1) Level III for the Chief Medical Director;
"(2) Level IV for the Deputy Chief Medical Director; and
"(3) Level V for all other positions for which such basic pay is paid under this section.".

(c) Title 5, United States Code, is amended by—

5 USC 5314.

(1) striking out in section 5314 the following:
"(38) Chief Medical Director in the Department of Medicine and Surgery, Veterans' Administration."; and

5 USC 5315.

(2) striking out in section 5315 the following:
"(31) Deputy Chief Medical Director in the Department of Medicine and Surgery, Veterans' Administration.".

(d)(1) Subchapter I of chapter 73 of title 38, United States Code, is amended by adding at the end thereof the following new section:

38 USC 4118.

Supra.

"§ 4118. Special pay for physicians and dentists

"(a)(1) Notwithstanding the provisions of section 4107(d) or any other provision of law, in order to recruit and retain highly qualified physicians and dentists in the Department of Medicine and Surgery, the Administrator, pursuant to the provisions of this section and regulations which he shall prescribe hereunder, shall provide, in addition to any pay or allowance to which such physician or dentist is entitled, special pay in an amount not more than (A) $13,500 per annum to any physician employed in the Department of Medicine and Surgery, or (B) $6,750 per annum to any dentist so employed, except as provided in paragraphs (2) and (3) of this subsection, upon the execution, and for the duration of, a written agreement by such physician or dentist to complete a specified number of years of service in the Department.

"(2) Special pay may not be paid under this section to any physician or dentist who—

"(A) is employed on less than a half-time or intermittent basis,
"(B) occupies an internship or residency training position, or
"(C) is a reemployed annuitant.

"(3) The Chief Medical Director, pursuant to such regulations, may determine categories of positions applicable to both physicians and dentists in the Department of Medicine and Surgery as to which there is no significant recruitment and retention problem. Physicians and dentists serving in such positions shall not be eligible for special pay under this section.

"(b) The Administrator shall exercise the authority contained in this section to provide—

"(1) the maximum amount of such special pay to the Chief Medical Director and Deputy Chief Medical Director;

"(2) primary special pay of $5,000 to any eligible full-time physician, or $2,500 to any eligible full-time dentist, appointed under this chapter; and

"(3) a proportional amount of primary special pay of $5,000 to any eligible part-time physician, or of $2,500 to any eligible part-time dentist, appointed under this chapter, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such physician or dentist bears to full-time employment.

Incentive special pay.

"(c) The Administrator shall, in accordance with such regulations, provide, in addition to the primary special pay provided for in subsection (b) of this section, incentive special pay of no more than $8,500 to any eligible physician, or $4,250 to any eligible dentist, described in clauses (2) and (3) of subsection (b) of this section. In prescribing regulations to carry out this subsection, the Administrator shall take into account only the following factors and may pay no more than the following per annum amounts of incentive special pay to any full-time physician eligible therefor, one-half the following per annum amounts to any full-time dentist eligible therefor (except that the full amount as specified in clause (1)(A)(iii) may be paid), or a proportional amount of the following per annum amounts to any part-time physician or dentist to the extent eligible therefor which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such physician or dentist bears to full-time employment:

"(1)(A)(i) full-time status, $2,000, and

"(ii) tenure of service within the Department of Medicine and Surgery as follows:

"(aa) completion of probationary period or three years, whichever is the lesser, $1,000, or

"(bb) completion of seven years, $2,000; and

"(iii) scarcity of medical or dental specialty $2,000; or

"(B) professional responsibility as follows:

"(i) Service Chief not in a scarce medical or dental specialty or Associate Chief of Staff, $5,500,

"(ii) Service Chief in a scarce medical or dental specialty, $7,000,

"(iii) Chief of Staff or Executive Grade, $7,000,

"(iv) Director Grade or Deputy Service Director, $7,250,

"(v) Service Director, $7,500,

"(vi) Deputy Assistant Chief Medical Director, $8,000, or

"(vii) Associate Deputy Chief Medical Director or Assistant Chief Medical Director, $8,500; and

"(2) continuing education certification, $500.

Special pay formula.

"(d)(1) The annual rate of special pay provided pursuant to this section shall be reduced by an amount calculated as of the effective date of an agreement entered into under this section, as follows: the difference between the annual rate of basic pay for the grade and step

of a physician or dentist in effect and payable on the day before the effective date of this section and the annual rate of basic pay in effect and payable on such effective date for such grade and step.

"(2) No part-time physician may be paid an aggregate amount of basic pay, pursuant to the rates applicable on the effective date of this section to physicians employed under this title, and special pay under this section in excess of $42,000 per annum, and no part-time dentist may be paid an aggregate amount of basic pay, pursuant to the rates applicable on the effective date of this section to dentists employed under this title, and special pay under this section in excess of $37,000 per annum.

"(e)(1) Any agreement entered into by a physician or dentist under this section shall be with respect to a period of one year of service in the Department of Medicine and Surgery unless the physician or dentist requests an agreement for a longer period of service not to exceed four years.

"(2)(A) Any such agreement shall provide that the physician or dentist, in the event that such physician or dentist voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to such agreement, shall be required to refund the total amount received under this section, unless the Chief Medical Director, pursuant to the regulations prescribed under this section, determines that such failure is necessitated by circumstances beyond the control of the physician or dentist.

"(B) Any such agreement shall specify the terms under which the Veterans' Administration and the physician or dentist may elect to terminate such agreement.

"(3) Any amount of special pay payable under this section shall be paid in biweekly installments.

"(4)(A) Any physician or dentist who is employed in the Department of Medicine and Surgery on or before the effective date of this section and who enters into an agreement under this section during the forty-five-day period beginning on the date of the enactment of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975 is entitled to special pay beginning on the effective date of this section.

"(B) Any physician or dentist who becomes employed in the Department of Medicine and Surgery after the effective date of this section and who enters into an agreement under this section before the close of the forty-five-day period beginning on the date of the enactment of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975 is entitled to special pay beginning on the date on which the physician or dentist becomes employed.

"(C) Any physician or dentist who becomes employed in the Department of Medicine and Surgery after the close of the forty-five-day period beginning on the date of the enactment of the Veterans' Administration Physician and Dentist Pay Comparability Act of 1975, or who does not enter into any agreement under this section before the close of such 45-day period, and who thereafter enters into an agreement under this section is entitled to special pay beginning on the date on which the agreement is entered into, or the date on which the physician or dentist becomes employed, whichever date is later.

"(f) Any additional compensation provided as special pay under this section shall not be considered as basic pay for the purposes of

subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 87 of title 5, or other benefits related to basic pay.".

5 USC 5551, 8101, 8301, 8701.

(2) The table of sections at the beginning of chapter 73 of title 38, United States Code, is amended by inserting

"4118. Special pay for physicians and dentists."

immediately after

"4117. Contracts for scarce medical specialist services.".

Report to congressional committees. 38 USC 4118 note.

SEC. 3. The Administrator of Veterans' Affairs shall submit a report each year to the Committees on Veterans' Affairs of the House of Representatives and the Senate regarding the operation of the special pay program authorized by section 4118 of title 38, United States Code, as added by section 2(d)(1) of this Act. The report shall be on a fiscal year basis and shall contain—

(1) a review of the program to date for the fiscal year during which the report is submitted and for such portion of the preceding fiscal year as was not included in the previous annual report; and

(2) any plan in connection with the program for the remainder of such fiscal year and for the succeeding fiscal year.

This report shall be submitted no later than April 30 of each year.

Reports to Congress. 38 USC 4118 note.

SEC. 4. (a) No later than August 31, 1976, the Comptroller General of the United States and the Director of the Office of Management and Budget shall complete the following activities and shall each submit a report thereon to the Congress:

(1) An investigation of the short-term and long-term problems facing the departments and agencies of the Federal Government (including the uniformed services) in recruiting and retaining qualified physicians and dentists.

(2) An evaluation of the extent to which the implementation of a uniform system of pay, allowances, and benefits for all physicians and dentists employed in such Federal departments and agencies would alleviate or solve such recruitment and retention problems.

(3) An investigation and evaluation of such other solutions to such recruitment and retention problems as each deems appropriate.

(4) On the basis of the investigations and evaluations required to be made under paragraphs (1), (2), and (3) of this subsection, (A) an identification of appropriate alternative suggested courses of legislative or administrative action (including proposed legislation) and cost estimates therefor, which in the judgment of the Comptroller General or Director, as the case may be, will solve such recruitment and retention problems, and (B) a recommendation, and justification therefore, of which such course should be undertaken.

(b) The reports required by subsection (a) of this section shall also include—

(1) a comprehensive analysis of—

(A) the existing laws and regulations relating to the employment of physicians and dentists by such departments and agencies of the Government, including an analysis of the various pay systems established pursuant to such laws,

(B) the existing physician and dentist recruitment, selection, utilization, and promotion practices of such departments and agencies, and

(C) the degree to which the various pay systems referred to in subparagraph (A), the practices referred to in subparagraph (B), and other relevant departmental and agency practices are effective in alleviating or solving such recruitment and retention problems; and

(2) a comparison of the remuneration received by physicians and dentists employed by such departments and agencies with the remuneration received by physicians and dentists in private practice or academic medicine who have equivalent professional or administrative qualifications, based upon information available through medical, dental, and health associations and other available sources.

Consultation.

(c) In preparing their respective reports required by subsection (a) of this section, the Comptroller General and the Director of the Office of Management and Budget shall consult, to the maximum extent feasible, with each other as well as with the Administrator of Veterans' Affairs, the Secretary of Defense, the Secretary of Health, Education, and Welfare, the Chairman of the Civil Service Commission, and the heads of other appropriate Federal departments and agencies.

Report to Congress.

(d) No later than March 1, 1977, the Comptroller General shall complete, and shall submit a report thereon to the Congress, a comprehensive investigation and analysis of recruitment and retention problems, both nationwide and geographically, of health care personnel other than physicians and dentists in the Department of Medicine and Surgery with respect to basic pay and premium and overtime pay rates.

(e) The report required by subsection (d) of this section shall specify—

(1) pay relationships which exist, both nationwide and geographically, between such personnel and similar employees of non-Federal health care facilities;

(2) pay relationships which exist, both nationwide and geographically, among such personnel in the Department of Medicine and Surgery (including an analysis of the effect of differing pay systems);

(3) the degree to which the pay relationships referred to in clauses (1) and (2) of this subsection create recruitment and retention or other personnel or related problems in the effective administration and achievement of the mission of the Department of Medicine and Surgery;

(4) the degree to which existing title 38 and title 5, United States Code, authorities have been able to be exercised in a way adequate to deal with any such recruitment and retention and pay problems as to such personnel; and

(5) (A) alternative suggested courses of legislative or administrative action (including proposed legislation) and cost estimates therefor, which in the judgment of the Comptroller General will alleviate or solve any such recruitment and retention and pay problems, and (B) a recommendation, and justification therefor, of which such course should be undertaken.

(f) In preparing the report required by subsection (d) of this section, the Comptroller General shall consult with the Chief Medical Director of the Veterans' Administration and with the heads of other appropriate Federal departments and agencies. Consultation.

(g) The heads of all Federal departments and agencies shall fully cooperate with and respond expeditiously to all reasonable requests for information and assistance in connection with the preparation of the reports required by this section. Agency cooperation.

(h) The Administrator of Veterans' Affairs shall submit to the appropriate Committees of the House of Representatives and the Senate reports, prepared by the Chief Medical Director, specifying the effect on the administration and achievement of the mission of the Department of Medicine and Surgery of the alternative courses and recommended course of action identified in the reports required by this section. Each such report shall be submitted no later than one hundred and twenty days after the date on which such other report in question is submitted to the Congress. Report to congressional committees.

SEC. 5. Chapter 73 of title 38, United States Code is amended as follows:

(a) Clause (1) of section 4104 is amended to read as follows: 38 USC 4104.

"(1) Physicians, dentists, nurses, physicians' assistants, and expanded-duty dental auxiliaries;".

(b) Section 4105 is amended by— 38 USC 4105.

(1) inserting at the end of subsection (a) the following new paragraph:

"(8) Physicians' assistants and expanded-duty dental auxiliaries shall have such medical or dental and technical qualifications and experience as the Administrator shall prescribe."; and

(2) striking out in subsection (b) "or nurse unless he" and inserting in lieu thereof "nurse, physicians' assistant, or expanded-duty dental auxiliary unless such person".

(c) Section 4106 is amended by adding at the end thereof the following new subsection: 38 USC 4106.

"(f) The provisions of this section shall apply to physicians' assistants and expanded-duty dental auxiliaries.".

(d) Section 4107 is amended by— 38 USC 4107.

(1) inserting before the period at the end of the third sentence of paragraph (5) of subsection (e) a comma and "except as voluntarily requested in writing by the nurse in question"; and

(2) inserting at the end thereof the following new subsection:

"(f) Under standards which the Administrator shall prescribe in regulations, physicians' assistants and expanded-duty dental auxiliaries shall be compensated by use of Nurse Schedule grade titles and related pay ranges and shall be entitled to additional pay on the same basis as provided for nurses in paragraphs (2) through (8) of subsection (e) of this section.".

(e) Section 4108 is amended by— 38 USC 4108.

(1) striking out in the language preceding clause (1) in subsection (a) "and nurses" and inserting in lieu thereof a comma and "nurses, physicians' assistants, and expanded-duty dental auxiliaries"; and

(2) striking out "or nurse" in the same language in such subsection and in clause (6)(B) thereof and inserting in lieu thereof

in each place "nurse, physicians' assistant, or expanded-duty dental auxiliary".

Effective dates. 38 USC 4118 note.

SEC. 6. (a)(1) The amendments made by section 2 of this Act shall become effective on October 12, 1975.

(2) No agreement to provide special pay may be entered into pursuant to section 4118 of title 38, United States Code (as added by section 2(d)(1) of this Act), after October 11, 1976.

38 USC 4104 note.

(b) Except as provided in subsection (a)(1) of this section, the amendments made by this Act shall become effective beginning the first pay period following thirty days after the date of the enactment of this Act.

Approved October 22, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-339 (Comm. on Veterans' Affairs).
SENATE REPORT No. 94-325 accompanying S. 1711 (Comm. on Veterans' Affairs).
CONGRESSIONAL RECORD, Vol. 121 (1975):
July 21, considered and passed House.
Aug. 1, considered and passed Senate, amended, in lieu of S. 1711.
Oct. 8, House concurred in Senate amendment with an amendment.
Oct. 9, Senate concurred in House amendment.