APPENDIX L. SENATOR ELIZABETH DOLE 21ST CENTURY VETERANS HEALTHCARE AND BENEFITS IMPROVEMENT ACT PAY MODIFICATIONS

1. **REASON FOR ISSUE:** This appendix implements section 142 of the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (P.L. 118-210, enacted January 2, 2025)("the Dole Act"), which amends 38 U.S.C. § 7431 pay provisions for physicians, podiatrists, optometrists, and dentists.

2. **SUMMARY OF CONTENTS:** This handbook implements policies to: (1) convert optometrists from the Clinical Chiropractor schedule to the physician, podiatrist, and dentist pay system under 38 U.S.C. § 7431; (2) enhance market pay criteria and establish annual Congressional reporting requirements; (3) establish statutory exclusions from aggregate limits for awards, incentives, bonuses, and fee basis earnings; (4) authorize the Secretary of Veterans Affairs to waive pay limitations for critical health care personnel providing direct patient care, with a maximum of 300 waivers; and (5) establish oversight requirements for fee basis providers to provide oversight and ensure appropriate use of fee basis authority. The pay limitation waiver authority expires on September 30, 2028. The Secretary has delegated authority to implement these provisions to the Under Secretary for Health, with coordination through the Chief Human Capital Officer. These provisions apply to all physicians, dentists, optometrists, and podiatrists of the Veterans Health Administration. Fee basis exclusion provisions in Paragraph 4.c apply to such providers with fee basis appointments under 38 U.S.C. § 7405(a)(2).

3. **RESPONSIBLE OFFICE:** Office of Human Resources and Administration (HRA) (OO6), Office of the Chief Human Capital Officer (OCHCO) (05), Compensation and Classification Service (055).

4. **RELATED DIRECTIVE:** VA Directive 5007, Pay Administration, dated April 15, 2002; VA Handbook 5007, Part IX – Pay for Physicians, Dentists, Podiatrists, and Optometrists; VA Handbook 5007, Part II, Appendix F – Fee Basis Appointments.

5. **RESCISSIONS:** Section 4. Pay Limitation Waivers expire on September 30, 2028. Optometrist conversion, market pay criteria enhancements, aggregate limit exclusions, and fee basis requirements remain permanent until otherwise rescinded or modified.

BY DIRECTION OF THE SECRETARY OF VETERAN AFFAIRS:

/s/
Mark R. Engelbaum
Assistant Secretary for
Human Resources and Administration

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APPENDIX L. SENATOR ELIZABETH DOLE 21ST CENTURY VETERANS HEALTHCARE AND BENEFITS IMPROVEMENT ACT
Section 142-Modification of Pay Limitation for Physicians, Podiatrists, Optometrists, and Dentists

1. **GENERAL.** This appendix provides instructions for implementing certain pay authorities and modifications outlined in section 142 of the *Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act* (P.L. 118-210, enacted January 2, 2025*)*. Section 142 of the Act:

   a. Amends 38 U.S.C. § 7431 Pay and 38 U.S.C § 7404 Grades and pay scales, by adding optometrists to the physician, dentist, and podiatrist pay system.

   b. Amends 38 U.S.C. § 7431(c) Market Pay, by adding annual employee notification requirements for other considerations the Secretary deems necessary for physicians, podiatrists, optometrists, and dentists (PPOD) market pay reviews and annual Congressional reporting criteria.

   c. Amends 38 U.S.C. § 7431(e), Requirements and Limitations on Total Pay, by clarifying the Secretary's existing authority to authorize the Under Secretary for Health (USH) to pay PPOD awards, advance payments, recruitment, relocation and retention incentives and bonuses, and critical skills incentives without regard to any aggregate limitation on compensation whether under title 38 or title 5. The Dole Act specifically adds new exclusion authority for earnings from fee basis appointments, providing these payments may be made to PPODs without regard to statutory aggregate limits (i.e. 38 U.S.C. § 7431(e)(4)). The amendments also grant the Secretary waiver authority for the recruitment and retention of PPODs determined critical for providing direct patient care.

   d. **Delegation of Authority**. The Secretary has delegated authority to implement the waiver authority in 38 U.S.C. § 7431(e)(6)(A) to the USH, as specified in Delegation of Authority for Pay Limitations Under the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (P.L. 118-210). The delegation also authorizes the Assistant Secretary for Human Resources and Administration (ASHRA) to prescribe requirements, limitations, and other considerations for waivers under this authority under 38 U.S.C. § 7431(e)(6)(E). The Chief Human Capital Officer (CHCO) will develop detailed implementation procedures to support the policy foundation.

2. OPTOMETRIST CONVERSION.

a. **Pay Schedule Transition.**

(1) Effective the first pay period beginning on or after the date following the Federal Register Notice period, and all required administrative and processing systems updates, optometrists will be converted to the PPOD pay system under 38 U.S.C. § 7431, as amended.

(2) In accordance with 38 U.S.C § 7404(b) as amended, optometrists are designated with the "optometrist grade" (OD) alongside physicians (MD/DO), podiatrists (DPM), and dentists (DDS/DMD).

(3) Optometrists are to be removed from the 38 U.S.C. § 7404 Salary Tables for Clinical Chiropractor and converted to the PPOD pay system.

b. **Conversion Requirements**.

(1) Human Resources offices must transition all optometrists to the PPOD pay system within the required timeframe specified by the completion of all administrative and processing updates, consistent with paragraph 2.a.(1).

(2) Human Resources offices, in coordination with authorizing officials (Medical Center Directors or designees), must conduct a market pay review using VA Form 10-0432A for each optometrist to determine appropriate compensation under the PPOD pay table.

(3) Each facility must issue performance pay goals and objectives using VA Form 10-0432 for each optometrist in accordance with Part IX, Paragraph 12 of this handbook.

(4) Optometrists will not experience a reduction in basic pay because of this conversion. If the market pay review conducted under paragraph 2.b.(2) determines appropriate compensation below the optometrist's current rate of pay, the employee will retain their existing rate of pay as a protected rate upon conversion. In other words, market pay will be set at the difference between existing annual rate of pay and the appropriate base/longevity step. If the market pay review determines appropriate compensation at or above current pay rate, the increase will be implemented in accordance with standard market pay adjustment procedures.

(5) The Center for Enterprise Human Resources Information Services (CEHRIS) must implement system modifications to support optometrist conversion to the PPOD pay system.

(6) Documentation of all optometrist conversions, to include market pay reviews and performance pay goals and objectives, must comply with VA Directive 6300, Records and Information Management policy.

3. MARKET PAY CRITERIA ENHANCEMENTS AND REPORTING REQUIREMENTS.

a. **Statutory Requirements (38 U.S.C. § 7431(c))**

(1) Market pay evaluations must occur at least once every 24 months. In accordance with Part IX, Paragraph 10a of this handbook, market pay review forms must explicitly state in writing whether the market pay will increase, decrease, or remain unchanged.

(2) Each PPOD must be advised annually of the Secretary's additional considerations for market pay, whether or not any such considerations have been established, no later than September 30th of each fiscal year. This standardized timing ensures consistent implementation across all VHA facilities and aligns with the fiscal year cycle for market pay review planning and Congressional reporting requirements. This annual notification requirement applies regardless of whether the considerations have changed from the previous year.

(3) Each PPOD must continue to be evaluated with prescribed market pay criteria and compensated in accordance with applicable assignment and pay levels (subject to relevant pay limitations) and the extent to which prescribed criteria are met.

(4) No market pay reduction is permitted while in the same position or assignment unless there is a change in board certification or privileges.

b. **Documentation Requirements.**

(1) Annual notifications of the evaluation criteria outlined in 38 U.S.C. § 7431(c)(4) and Part IX, Paragraph 9h of this handbook must be documented and maintained.

(2) Authorizing officials (Medical Center Directors or designee) are required to:

(a) Ensure market pay determinations for each PPOD are evaluated and fully documented on VA Form 10-0432A in accordance with the criteria outlined in the annual notification.

(b) Ensure the final market pay determination for each PPOD is appropriate for the applicable assignment and corresponding pay limitations.

c. **Congressional Reporting Requirement.** An annual report on the market pay of PPOD will be submitted by the USH to the ASHRA no later than 90 days after the end of the fiscal year. ASHRA will submit the report to the Secretary and Congress no later than 120 days after the end of the fiscal year as outlined in 38 U.S.C § 7431(c)(8). The report will include the following:

(1) A list of each facility and specialty/assignment that conducted a market pay review during the period covered by the report.

(2) A list of occupations for which market pay was reviewed, separated by medical specialty, number of authorized full-time employees, and on-site full-time employees, as of the date of the evaluation.

(3) List the date each market pay review was completed; whether a market pay adjustment was made following the market pay review for each occupation and specialty reviewed; whether applicable employees were notified of their market pay review, and whether local labor partners were notified of market pay reviews.

(4) If the market pay review resulted in an increase of pay, list the date the market pay increase was implemented, the date the market pay increase became effective, and the percentage of employees of each occupation and specialty that received a pay increase.

(5) This report must also include a list of VHA facilities that have not conducted a market pay review, pursuant to 38 U.S.C. § 7431(c)(5), during the 18-month period that precedes the date of this report.

d. **Additional Compensation.**

(1) 38 U.S.C § 7431(e)(5)(A)-(D), as added by the Dole Act, addresses exclusions from statutory aggregate pay limitation calculations, for awards, advance payments, recruitment and retention incentives, performance-based bonuses, and fee basis earnings to covered employees. These payments will not count toward annual compensation limits when determining total compensation, representing a significant expansion of compensation authorities to enhance recruitment and retention efforts.

(2) Detailed implementation procedures for excluded compensation, including eligibility criteria, approval processes, and documentation requirements, are provided in VA Handbook 5007, Part IX – Pay for VHA Physicians, Dentists, Podiatrists, Optometrists, and Part II, Appendix F – Fee Basis Appointments.

4. PAY LIMITATION WAIVERS.

a. **Waiver Authority (38 U.S.C. § 7431(e)(6)).**

(1) Per 38 U.S.C. § 7431(e)(6), the Secretary (or delegee) may waive pay limitations for critical health care personnel. The Dole Act grants discretion to waive any pay limitation under 38 U.S.C. § 7431 when necessary for recruitment or retention. This authority specifically targets critical health care personnel providing direct patient care, allowing for compensation above previous caps when market conditions justify it.

(2) The waiver authority limits the total number of waivers to 300 for the entire duration of authority. This cap applies across all of VHA, and prioritization is essential to ensure waivers support positions with the most significant impact on direct patient care and address recruitment and retention challenges. Strong justification documentation is required.

(3) Each waiver is subject to a thorough, multi-level review process that includes the OCHCO, who assesses the impact on the workforce; the Chief Financial Officer (CFO), who analyzes the budget; and the Office of General Counsel (OGC), who ensures legal compliance. This comprehensive review guarantees that waivers are carefully examined in terms of workforce needs, financial viability, and legal standards. Documentation of these reviews must be maintained and reported to Congress annually, ensuring a transparent accountability mechanism for this compensation authority.

(4) As specified in 38 U.S.C. § 7431(e)(6)(G), the authority to approve waivers terminates on the last day of the third full fiscal year following the date of the enactment of the Dole Act (September 30, 2028). While market pay is always subject to change in accordance with law and VA policy, pay limitation waivers approved prior to the sunset date remain in effect until the employee separates from the position. No new waivers may be issued after the sunset date.

b. **Priority Considerations.**

(1) Priority will be given to positions currently filled through expensive contracts with third-party providers and positions, locations, and care provided through contracts at a high cost to the Department, in accordance with 38 U.S.C § 7431(e)(6)(B). Transitioning these contracted roles to VA employment with competitive pay packages can result in substantial cost savings and improve continuity of care. The Secretary (or delegee) must evaluate the total costs of contracting or community care options, including administrative overhead, premiums for after-hours coverage, and quality oversight expenses, compared to the projected costs of a compensation package improved by a waiver. Focus should be on roles where a return on investment from conversion is supported by a thorough cost-benefit analysis and where contractor turnover has disrupted consistent care delivery.

(2) Positions in critical specialities that provide direct patient care and significantly impact access to essential services should be given high priority for waivers. These positions include physicians in critical, high-paying specialties who offer unique services that are not easily accessible and readily available across the enterprise. Examples of these positions include, but are not limited to, Neurosurgeons performing critical procedures, Radiation Oncologists who perform complex cancer

treatments often unavailable in the community, as well as Cardiothoracic and Orthopedic Surgeons in underserved areas who help prevent higher downstream costs. Documentation for pay limitation waivers must clearly show the direct connection between recruiting and/or retaining providers in these positions and the maintenance of crucial health care services, especially in cases where failing to staff these roles would require sending Veterans to rural VA facilities or into community care.

(3) Positions that experience ongoing recruitment difficulties or high turnover rates should be prioritized for waiver consideration. To support these cases, it is important to provide measurable evidence, such as:

(a) Effectiveness of recruitment, relocation, and retention incentives

(b) Productivity Levels

(c) Providers with highest total pay in critical specialties providing direct patient care

(d) Local market factors and competitive salaries for the clinical specialty

(e) High community care costs or contract costs for the clinical specialty

(f) Offer rejection or low job application rates due to compensation

(4) Priority consideration should also be given to critical specialties where market pay surveys for the local labor market reveal significant pay misalignments between VA salaries and private sector salaries. Facilities should thoroughly document unsuccessful recruitment, and retention attempts for those critical specialties where compensation is a major barrier in achieving and maintaining required physician staff levels. Positions that require multiple costly recruitment cycles present especially strong cases for waiver consideration.

(5) Labor markets facing unique geographic challenges related to pay misalignment for critical specialties and/or significant market pressures should be prioritized for waivers. This includes rural and remote locations with severe provider shortages in critical specialties, to include urban localities with a high cost of living where VA compensation falls short of market rates, or regions experiencing acute shortages of providers in critical specialties. Facilities must provide documentation of market analysis that highlights specialty-specific recruitment challenges in their labor market. This should include compensation data from comparable health care systems and metrics on regional workforce availability. Special consideration should be given to positions that have persistent staffing gaps due to geographic isolation or less-than-optimal market conditions, despite various recruitment efforts.

c. **Annual Congressional Report for Physician, Podiatrist, Optometrist, and Dentist Pay Limitation Waivers**. An annual report on PPOD pay limitation waivers processed under section 142 of the Dole Act will be submitted from the USH to the OCHCO (or ASHRA) no later than 180 days after the date of the enactment of the Act, and annually thereafter 60 days after the end of the calendar year for distribution to the Secretary and Congress as outlined in 38 U.S.C § 7431(e)(6)(F). The report will include the following:

(1) Updates to the requirements, limitations, and considerations prescribed for waivers (especially on determining priority for waivers that are costly to the Department) during the period covered by the report.

(2) A description of review findings (if any) conducted by the Department's CHCO, the Department's CFO, and the Department's OGC, as outlined in 38 U.S.C § 7431(e)(6)(C).

(3) A description of each waiver granted by the Secretary in effect as of the date of the submission of the report that includes:

(a) The duty location, position, specialty, market, and performance considerations for the waiver; and

(b) The impact, if any, of the waiver on care furnished by the Department pursuant to an agreement regarding the geographic area.

(4) A list of any separation actions during the period covered by the report with respect to a position for which a waiver approved under 38 U.S.C § 7431(e)(6) is in effect.

d. **Oversight of High-Earning Fee Basis Providers appointed under 38 U.S.C. §7405(a)(2)(A) dual appointed as a physician, dentist, podiatrist, or optometrist**. (Established under the Secretary's authority in 38 U.S.C. § 501)

(1) This oversight requirement is established to maintain transparency and accountability when administering the fee basis program. The enhanced review process and documentation requirements are designed to prevent potential misuse or abuse of fee basis authority while ensuring that legitimate clinical needs are met effectively and efficiently. Additional details on fee basis appointments are provided in VA Handbook 5007, Part II, Appendix F – Fee Basis Appointments.

(2) This oversight requirement applies to fee-basis providers with dual appointments (regular VA appointment plus a fee basis appointment) whose fee basis earnings exceed $150,000 in a calendar year. While the provider's regular appointment compensation remains subject to applicable aggregate pay limitations under 38 U.S.C. § 7431(e)(4) (e.g. covered title 38 compensation such as market, base, and performance pay cannot

exceed the salary of the President), their fee basis earnings are excluded from the statutory aggregate limit per 38 U.S.C. § 7431(e)(5)(D). For providers who have received pay limitation waivers under 38 U.S.C. § 7431(e)(6), the waiver applies only to their regular appointment compensation; however, fee basis earnings remain excluded from any statutory aggregate limit regardless of waiver status. When the $150,000 fee basis threshold is reached, the fee basis appointment will undergo enhanced review to ensure the fee basis arrangement is appropriate for the services provided and is not being used in place of hiring a permanent provider for services that require regular and recurring staffing. In the case of dual appointments, a fee basis appointment is appropriate only for tasks or services outside the scope of the regular appointment.

(3) The Network Director will review all arrangements, considering the provider's total compensation package, including any pay limitation waivers in effect, and provide a recommendation to the USH, who must approve continuation of the fee basis appointment. This review process, established under the Secretary's authority in 38 U.S.C. § 501, ensures appropriate use of fee basis appointments while maintaining the exclusion of fee basis earnings from aggregate pay limitations under 38 U.S.C. § 7431(e)(5)(D).

5. REFERENCES.

a. Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (P.L. 118-210)

b. 38 U.S.C. § 7431 – Pay for Physicians, Podiatrists, Dentists, and Optometrists

c. VA Handbook 5007, Part IX – Pay for Physicians, Dentists, Podiatrists, and Optometrists

d. VA Handbook 5007, Part II, Appendix F – Fee Basis Appointments

e. 38 U.S.C. § 501 – Rules and Regulations

f. 38 U.S.C. § 706 – Additional Authority Relating to Recruitment and Retention of Personnel

g. 38 U.S.C. § 7405 – Temporary full-time, part-time appointments, and without compensation appointments

h. 38 U.S.C. § 7410 – Additional Pay Authorities

6. POINTS OF CONTACT.

a. Policy Questions: Compensation and Classification Service: (ochcocompandclasssvc@va.gov)

b. HR Systems Questions: CEHRIS Program Office: vacocehris@va.gov or vacoHRPICSS@va.gov

c. Physician, Podiatrist, Optometrist, and Dentist Pay Questions: VHA Workforce Management and Consulting Office, HR Center of Expertise (VHA106AWMCCOEPDPEXECPay@va.gov)