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SUBJECT: DoD Civilian Personnel Management System: Pay Pursuant to Title 38--
Additional Pay for Certain Healthcare Professionals

References: See Enclosure 1

1. PURPOSE

a. Instruction. This Instruction is composed of several volumes, each containing its own purpose. The purpose of the overall Instruction is to establish and implement policy, establish procedures, provide guidelines and model programs, delegate authority, and assign responsibilities regarding civilian personnel management within the Department of Defense.

b. Volume. This Volume of this Instruction provides rules for compensating employees paid additional pay pursuant to section 5371 of title 5, United States Code, (U.S.C.) (Reference (a)) and sections 7453 and 7454 of title 38, U.S.C. (Reference (b)) as authorized by section 1104 of Reference (a) and the Delegation Agreements between the Office of Personnel Management (OPM) and the Department of Defense (Reference (c)).

2. APPLICABILITY. This Volume applies to:

a. Permanent or temporary full-time, part-time, or intermittent nurses (including nurse anesthetists).

b. Permanent or temporary full-time, part-time, or intermittent physician assistants and expanded function dental assistants.

c. Certain other healthcare professionals including non-physician healthcare providers as defined in DoD Directive 6025.13 (Reference (d)).

d. Full-time nurses covered by section 7456 of Reference (b) and Volume 541 of this Instruction (commonly known as the "Baylor Plan") who are regularly scheduled to work two

12-hour tours of duty on weekends may not receive additional pay for work performed during their regularly-scheduled tours of duty.

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy pursuant to DoD Directive 1400.25 (Reference (e)) that:

a. The Head of a DoD Component, or his or her designee, may approve the use of this additional pay authority in lieu of premium pay pursuant to chapter 55 of Reference (a) for a category of nurse or other healthcare professional in any DoD medical or dental treatment facility under his or her jurisdiction. This authority may be delegated to a commander of a medical or dental treatment facility or its equivalent, but no lower.

b. The decision to approve the use of this additional pay authority for a category of nurse or other healthcare professional must be coordinated with the commander(s) and/or director(s) of all other Federal healthcare facilities in the local area to ensure that all Federal nurses or other healthcare professionals in similar situations are treated in the same manner. Where there are differences in staffing situations, equal compensation is not necessarily appropriate.

c. The lead agent of the appropriate military health services region must be notified when any provision of Reference (b) is implemented within that region. The lead agent may monitor the use of a Reference (b) provision implemented within the region to determine its impact on healthcare delivery.

d. The authority to use additional pay will be approved based on recruitment and retention problems caused by local private and non-Federal public pay practices.

e. The commander of a medical or dental treatment facility or its equivalent shall ensure that all affected nurses or other healthcare professionals are granted additional pay on a fair and equitable basis.

f. The commander of a medical or dental treatment facility or its equivalent may terminate additional pay authorized for any nurse or other healthcare professional pursuant to this Volume when such pay is no longer necessary to meet recruitment or retention needs. Such termination is not an adverse action. However, an affected employee must be notified of the intent to terminate the use of this additional pay authority as soon as practicable before the use of the authority is terminated.

5. PROCEDURES. Enclosure 2 sets forth procedures for providing additional pay to certain healthcare professionals.

6. RELEASABILITY. UNLIMITED. This Volume is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This Volume is effective immediately.

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ENCLOSURE 1

REFERENCES

- (a) Sections 1104, 5304, 5305, 5371, 5542, and 5547 and chapter 55 of title 5, United States Code
- (b) Sections 7453, 7454, 7455, and 7456 of title 38, United States Code
- (c) Delegation Agreements Between the Office of Personnel Management and the Department of Defense, "Use of Certain Personnel Authorities for Healthcare Occupations," current edition¹
- (d) DoD Directive 6025.13, "Medical Quality Assurance (MQA) in the Military Health System (MHS)," May 4, 2004
- (e) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
- (f) Parts 550 and 551 of title 5, Code of Federal Regulations
- (g) Chapter 8 of title 29, United States Code

¹ Available on the Civilian Personnel Management Service website at www.cpms.osd.mil/fas/classification/pay_policy_memos.aspx

ENCLOSURE 2

PROCEDURES

1. COMPUTATION OF PAY

a. Additional pay pursuant to sections 2 through 6 of this enclosure for a nurse or other healthcare professional--including additional pay for a full-time nurse who is regularly scheduled to work two 12-hour tours of duty on weekends--is based on an hourly rate of basic pay derived by dividing the employee's annual rate of basic pay by 2087 and rounding to the nearest whole cent, counting .5 cents and over as 1 cent.

b. The biweekly and annual limitations on premium pay pursuant to section 5547 of Reference (a) do not apply to a nurse or other healthcare professional covered by this section of this enclosure.

c. An employee receiving additional pay pursuant to sections 7453 and 7454 of Reference (b) and this section of this enclosure may not receive premium pay pursuant to chapter 55 of Reference (a) and subpart A of part 550 of title 5, Code of Federal Regulations (Reference (f)), and is exempt from the overtime provisions of chapter 8 of title 29, U.S.C. (Reference (g)) and subpart E of part 551 of Reference (f).

d. When a nurse or other healthcare professional is entitled to more than one type of additional pay for the same period of service, the amounts are calculated separately on the basis of the employee's hourly rate of basic pay as set forth in paragraph 1.a. of this enclosure.

e. An employee may not receive overtime pay pursuant to section 5 of this enclosure in addition to holiday pay pursuant to section 4 of this enclosure for the same period. An employee who works in excess of 8 hours in a day on a holiday receives holiday pay pursuant to section 4 of this enclosure for each hour of work on that day.

f. Additional pay is not considered basic pay for the purposes of civil service retirement, Federal Employees Group Life Insurance, compensation for work injury, lump-sum annual leave payments, severance pay, or other benefits relating to basic pay.

2. TOUR DIFFERENTIAL. A nurse or other healthcare professional on a tour of duty any part of which falls between 6 p.m. and 6 a.m., and who works 4 or more hours between 6 p.m. and 6 a.m., shall be paid additional pay for each hour of work on such tour. When fewer than 4 hours of work fall between 6 p.m. and 6 a.m., a nurse or other authorized healthcare professional shall be paid additional pay for each hour of work performed between 6 p.m. and 6 a.m. Tour differential pay is 10 percent of the employee's hourly rate of basic pay unless a higher tour differential is approved pursuant to the authority in section 9 of this enclosure.

3. WEEKEND DUTY. A nurse or other healthcare professional on a tour of duty any part of which falls between midnight Friday and midnight Sunday shall be paid additional pay for each hour of work during such tour. A nurse or other healthcare professional who has two separate tours of duty, each of which qualify as weekend duty, shall be paid additional pay for each hour of both tours. Additional pay for weekend duty is 25 percent of the employee's hourly rate of basic pay unless a higher rate is approved pursuant to the authority in section 9 of this enclosure.

4. HOLIDAY PAY

a. A full-time nurse or other healthcare professional on a 40-hour basic workweek who works on a holiday shall receive for each hour of work on the holiday basic pay plus additional pay at a rate equal to the employee's hourly rate of basic pay unless a higher rate is approved pursuant to the authority in section 9 of this enclosure. When the basic workweek of a nurse or other authorized healthcare professional includes portions of two tours on a holiday, the holiday benefit shall apply to the shift that begins on the holiday.

b. When a full-time nurse or other healthcare professional performs work on a holiday, such duty is deemed to be at least 2 hours in duration for the purposes of holiday pay.

c. A part-time or intermittent nurse or other healthcare professional shall be paid holiday pay only for work performed on the actual calendar holiday; i.e., no in lieu of day will be designated.

d. A full-time nurse whose basic tour of duty is two 12-hour tours on weekends (i.e., a nurse who is covered by section 7456 of Reference (b) may not receive holiday pay for work that is performed during the employee's regularly-scheduled tour of duty.

5. OVERTIME PAY

a. A nurse or other healthcare professional (except a nurse covered by section 7456 of Reference (b) and Volume 542 of this Instruction) who performs work that is officially ordered and approved in excess of 40 hours in an administrative workweek, or in excess of 8 hours in a day, shall receive overtime pay at a rate of 1.5 times his or her hourly rate of basic pay. A nurse or other healthcare professional covered by a compressed work schedule shall receive overtime pay for hours of officially ordered and approved work in excess of the compressed work schedule.

b. Except as otherwise provided, irregular or occasional overtime work of less than 1 hour will be calculated in increments of 15 minutes. An employee must perform at least 15 minutes of such overtime work to receive additional pay for such work.

c. Overtime work performed by a nurse or other healthcare professional on a day when work was not scheduled, or for which he or she is required to return to the work place, is deemed to be at least 2 hours in duration for the purposes of overtime pay. When an employee is called from on-call duty to perform overtime work, these provisions apply and the on-call duty is suspended.

d. Overtime pay pursuant to this section of this enclosure is not limited by the provisions of section 5542 (a)(2) of Reference (a).

6. ON-CALL DUTY (“BEEPER” OR “PAGER” PAY)

a. A full-time nurse or other healthcare professional officially scheduled to be on-call outside his or her regularly-scheduled duty hours or on a holiday shall be paid 10 percent of his or her applicable overtime rate (pursuant to sections 5 and 9 of this enclosure) for each hour of on-call duty. On-call duty shall be suspended during any period of actual overtime work. When the employee is released from a period of overtime work, the employee returns to his or her remaining scheduled on-call duty, if any, and receives additional pay for on-call duty accordingly.

b. A part-time or intermittent nurse or other healthcare professional is entitled to receive additional pay for on-call duty when he or she is regularly scheduled to be in an on-call status. When called back to work, such an employee shall be paid his or her hourly basic rate of pay for non-overtime work and/or overtime rate for overtime work.

c. When an employee performing on-call duty is required to return to work, the time spent performing actual work is deemed to be at least 2 hours in duration for pay purposes. An employee may not also be paid additional pay for on-call duty for periods that are deemed to be actual work under this provision.

d. While in an on-call status, an employee must be available to return to work promptly. If an employee is incapacitated or otherwise unavailable to return to work during a period of scheduled on-call duty, the employee must report his or her incapacitation or unavailability to the official authorizing the duty. An employee who is relieved from performing scheduled on-call duty is not entitled to pay for such duty.

7. COMPENSATORY TIME OFF

a. An employee may request in writing and be granted compensatory time off in lieu of overtime pay for regularly-scheduled or irregular and occasional overtime work. The amount of the compensatory time off will equal the amount of time spent in overtime work. An intermittent employee may not request and be granted compensatory time off in lieu of payment for overtime work.

b. An employee may not be required to accept compensatory time off in lieu of payment for overtime work.

c. Compensatory time off should be used as soon as possible after it is earned but not later than the end of the twenty-sixth pay period following the pay period in which it is earned. Any unused compensatory time off shall be paid at the overtime rate at which it was earned.

d. A full-time nurse whose basic tour of duty is two 12-hour tours on weekends (i.e., a nurse who is covered by section 7456 of Reference (b), may not be granted compensatory time off in lieu of overtime pay.

8. PAYMENTS DURING PERIODS OF LEAVE AND AUTHORIZED ABSENCE

a. A nurse or other healthcare professional may not be charged leave during periods of regularly-scheduled on-call duty, nor may such an employee receive additional pay for regularly-scheduled on-call duty when, because of leave or other authorized absence, the employee is not expected to be able to return to work immediately.

b. When on court leave or military leave, a nurse or other healthcare professional is entitled to such additional pay as he or she otherwise would have received.

c. When on annual or sick leave or on compensatory time off, a nurse or other healthcare professional is entitled to tour differential pay for a period of paid leave only when the total amount of leave in a pay period is less than 8 hours.

d. When excused from work because of a holiday or in lieu of holiday, a nurse or other healthcare professional is entitled to any otherwise appropriate tour differential pay.

9. HIGHER RATES OF ADDITIONAL PAY. Section 7453(j) of Reference (b) provides the authority to approve higher rates of additional pay than allowed in sections 2 through 6 of this enclosure. At this time, this authority is reserved.

10. RECORD-KEEPING REQUIREMENTS. The commander of a medical or dental treatment facility or its equivalent and the affected director of personnel shall keep adequate records to evaluate the use of this authority as required by the Assistant Secretary of Defense for Health Affairs. Such records shall include:

a. How the authority is used by the facility;

b. The location of the facility;

c. The type of occupations covered; and

d. Any other pertinent data that may be required to evaluate the overall use of the authority by the Department of Defense and OPM.

GLOSSARY

DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this Volume.

additional pay. A premium paid to an employee for working under circumstances or conditions authorized by section 7453 of Reference (b) and this Volume. Such pay includes tour differential, holiday pay, and pay for weekend duty, overtime work, and on-call duty.

category of nurse or other healthcare professional. A nurse or group of nurses, or healthcare professional or group of healthcare professionals, who performs service within a specialization of the nursing or other specific healthcare occupation.

dental treatment facility. A DoD dental facility staffed and equipped to provide dental care to eligible beneficiaries. It may be affiliated with or independent of a medical treatment facility. A dental treatment facility is funded by the Defense Health Program.

lead agent. The officer who, in addition to commanding a medical center within one of twelve geographic regions within the United States, is responsible for coordinating healthcare initiatives within the region. The lead agent has no direct authority over the tri-Service commanders within the region. However, he or she works in a collaborative manner with Military Health Services System partners to manage the delivery of healthcare within the region.

medical treatment facility. A DoD health facility staffed and equipped to provide inpatient and/or outpatient medical care to eligible beneficiaries. It may be affiliated with or independent of a dental treatment facility. A medical treatment facility is funded by the Defense Health Program.

nurse. A registered nurse, nurse anesthetist, or licensed practical or vocational nurse; does NOT include a graduate nurse technician or student nurse technician.

rate of basic pay. The rate of pay fixed by law or administrative action for the position held by the employee including any locality pay pursuant to section 5304 of Reference (a) or special salary rate authorized by section 5305 of Reference (a) and section 7455 of Reference (b).

tour of duty. The hours of a day and the days of an administrative workweek that constitute an employee's regularly-scheduled workweek including regularly-scheduled overtime work.