



## DoD INSTRUCTION 1400.25, VOLUME 540

# DoD CIVILIAN PERSONNEL MANAGEMENT SYSTEM: PAY PURSUANT TO TITLE 38—ADDITIONAL PAY FOR CERTAIN HEALTHCARE PROFESSIONALS

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<b>Originating Component:</b>	Office of the Under Secretary of Defense for Personnel and Readiness
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<b>Reissues and Cancels:</b>	DoD Instruction 1400.25, Volume 540, "DoD Civilian Personnel Management System: Pay Pursuant to Title 38—Additional Pay for Certain Healthcare Professionals," December 1, 1996, as amended
<b>Incorporates and Cancels:</b>	Under Secretary of Defense for Personnel and Readiness Memorandum, "Title 38 Authority for Head Nurse Pay," August 26, 2005
<b>Approved by:</b>	Robert L. Wilkie, Under Secretary of Defense for Personnel and Readiness

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**Purpose:** This issuance is composed of several volumes, each containing its own purpose. In accordance with the authority in DoD Directives 5124.02 and 1400.25:

- This instruction establishes and implements policy, establishes procedures, provides guidelines and model programs, delegates authority, and assigns responsibilities regarding civilian personnel management within the DoD.
- This volume provides rules governing additional compensation to certain employees pursuant to Sections 1104 and 5371 of Title 5, United States Code (U.S.C.); Sections 7401(3), 7452, 7453, and 7454 of Title 38, U.S.C.; Section 1599(c) of Title 10, U.S.C.; Public Law 111-163; and the July 1, 2014 Delegation Agreement between the Office of Personnel Management (OPM) and the DoD.

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.** This issuance applies to:

- a. OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).
- b. Permanent or temporary full-time, part-time, or intermittent nurses, including nurse anesthetists.
- c. Permanent or temporary full-time, part-time, or intermittent physician assistants and expanded function dental assistants.
- d. Certain other healthcare professionals, including non-physician healthcare providers listed in Section 7401(3) of Title 38, U.S.C., as authorized in the 2014 OPM/DoD Delegation Agreement.

### **1.2. POLICY.** It is DoD policy that:

- a. Additional pay authority may be approved pursuant to Chapter 55 of Title 5, U.S.C., for a healthcare professional covered by this volume in any DoD medical or dental treatment facility.
- b. The use of this additional pay authority for a category of healthcare professionals should, in most cases, ensure that all federal 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 authority to use additional pay will be approved based on recruitment and retention problems caused by local private and non-federal public pay practices.
- d. Additional pay will be granted on a fair and equitable basis.
- e. Additional pay authorized for a healthcare professional pursuant to this volume may be terminated when such pay is no longer necessary to meet recruitment or retention needs. Such termination is not an adverse action.
- f. Implementation and execution of any additional authority in accordance with this volume waives the comparable authority in Title 5, U.S.C.

## SECTION 2: RESPONSIBILITIES

**2.1. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS (ASD(M&RA)).** Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the ASD(M&RA) has overall responsibility for the development of DoD civilian personnel policy covered by this volume.

**2.2. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY (DASD(CPP)).** Under the authority, direction, and control of the ASD(M&RA), the DASD(CPP) supports the development of civilian personnel policy covered by this volume and monitors its execution by the DoD Components, ensuring consistent implementation and continuous application throughout the DoD.

**2.3. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS.** Under the authority, direction, and control of the USD(P&R), and as authorized by DoD Directive 5136.01, the Assistant Secretary of Defense for Health Affairs coordinates with the ASD(M&RA), as necessary, on the provisions of this volume.

**2.4. DIRECTOR, DOD HUMAN RESOURCES ACTIVITY.** Under the authority, direction, and control of the USD(P&R), the Director, DoD Human Resources Activity, provides support to the DASD(CPP), as appropriate, in the execution of the duties and responsibilities in this volume.

**2.5. DOD COMPONENT HEADS.** The DoD Component heads:

a. Implement additional pay for certain healthcare professionals within their areas of responsibility. This authority may be delegated, in writing, to the Military Department Surgeon General concerned, the Military Department Assistant Secretary concerned, or to officials who exercise personnel appointing authority.

b. Approve the use of additional pay for certain healthcare professionals in any DoD medical treatment facility under their respective jurisdictions and coordinate with the commanders or directors of all other federal healthcare facilities in the local area to ensure that federal healthcare professionals in similar situations are treated equitably. Where there are differences in staffing situations, equal compensation may not necessarily be appropriate. This authority may be further delegated, in writing, to a commander or director of a medical or dental treatment facility or its equivalent, but no lower.

**2.6. DEFENSE AGENCY HEADS AND DOD FIELD ACTIVITY DIRECTORS WITH INDEPENDENT APPOINTING AUTHORITY AND DOD COMPONENT MILITARY TREATMENT FACILITY COMMANDERS AND DIRECTORS.** In addition to the responsibilities in Paragraph 2.5, the Defense Agency heads and DoD Field Activity directors

with independent appointing authority and DoD Component military treatment facility commanders and directors:

- a. Notify the appropriate DoD Component head of any changes in the application or use of additional pay for certain healthcare professionals.
- b. Monitor pay administration practices to determine the impact on healthcare delivery, recruitment, and retention.
- c. Monitor pay administration practices to ensure consistent and equitable treatment of similarly situated healthcare professionals covered by this volume among federal employers in the local area.
- d. Keep adequate records to evaluate the use of this authority as required by the Assistant Secretary of Defense for Health Affairs and identified in Section 3.
- e. Provide supplemental policy, direction, and resources as necessary to ensure the effective application of the authorities of the 2014 OPM/DoD Delegation Agreement and this volume.
- f. Ensure collective bargaining obligations, as appropriate, are satisfied in accordance with Chapter 71 of Title 5, U.S.C., Title 38, U.S.C., and Section 1599c of Title 10, U.S.C.

## SECTION 3: PROCEDURES

### 3.1. COMPUTATION OF PAY.

a. Additional pay for a healthcare professional, as described in Paragraphs 3.2 through 3.6, 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 cent and over as 1 cent. This includes additional pay for a full-time nurse who is regularly scheduled to work two 12-hour periods of service on weekends.

b. The biweekly and annual limitations on premium pay pursuant to Section 5547 of Title 5, U.S.C., do not apply to a healthcare professional covered by this section.

c. An employee receiving additional pay pursuant to Sections 7453 and 7454 of Title 38, U.S.C., and this section may not receive premium pay pursuant to Chapter 55 of Title 5, U.S.C., or Subpart A of Part 550 of Title 5, Code of Federal Regulations. Such employees are exempt from the overtime provisions of Chapter 8 of Title 29, U.S.C., and Subpart E of Part 551 of Title 5, Code of Federal Regulations.

d. As authorized in the 2014 OPM/DoD Delegation Agreement, the following healthcare titles are added to the list of healthcare occupations in Section 7401(3) of Title 38, U.S.C., and are authorized to receive premium pay under Section 7454(b)(1) of Title 38, U.S.C.: paramedic, emergency medical technician, advanced life support technician, health technician (urology), and urology technician. The added titles all provide direct patient-care services or services incident to direct patient-care, as prescribed by Section 5371 of Title 5, U.S.C.

e. When a 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 3.1.a.

f. An employee may not receive overtime pay as described in Paragraph 3.5 in addition to holiday pay pursuant to Paragraph 3.4 for the same period. An employee who works more than 8 consecutive hours on a holiday receives holiday pay pursuant to Paragraph 3.4 for each hour of work on that day.

g. 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.

**3.2. TOUR DIFFERENTIAL.** Tour differential pay is 10 percent of the employee's hourly rate of basic pay unless a higher tour differential has been approved pursuant to the authority in Paragraph 3.9.

a. A healthcare professional on a period of service, 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., will be paid additional pay for each hour of work on that period of service.

b. When fewer than 4 hours of work fall between 6 p.m. and 6 a.m., a healthcare professional will be paid additional pay for each hour of work performed between 6 p.m. and 6 a.m.

**3.3. WEEKEND DUTY.** Additional pay for weekend duty is 25 percent of the employee's hourly rate of basic pay unless a higher rate has been approved pursuant to the authority in Paragraph 3.9.

a. A healthcare professional on a period of service, any part of which falls between midnight Friday and midnight Sunday, will be paid additional pay for each hour of work during the period of service.

b. A healthcare professional who has two separate periods of service, each of which qualifies as weekend duty, will be paid additional pay for each hour of both periods.

### **3.4. HOLIDAY PAY.**

a. A full-time healthcare professional on a 40-hour basic workweek who works on a holiday will 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. In certain cases, a higher rate of additional pay may be available in accordance with Paragraph 3.9. When the basic workweek of an authorized healthcare professional includes portions of two periods of service on a holiday, the holiday benefit will apply to the shift that begins on the holiday.

b. When a full-time healthcare professional performs work on a holiday, that duty is counted as at least 2 hours for the purposes of holiday pay.

c. A part-time or intermittent healthcare professional will 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 period of service is two 12-hour periods of service on weekends (i.e., a nurse who is covered by Section 7456 of Title 38, U.S.C.), may not receive holiday pay for work that is performed during his or her regularly scheduled period of service.

### **3.5. OVERTIME PAY.**

a. A healthcare professional who performs service that is officially ordered and approved in excess of 40 hours in an administrative workweek, or in excess of 8 consecutive hours, will receive overtime pay at a rate of 1.5 times his or her hourly rate of basic pay. This does not include a nurse covered by Section 7456 of Title 38, U.S.C., and Volume 542 of DoD Instruction 1400.25. A healthcare professional covered by a compressed work schedule will 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 overtime work to receive additional pay.

c. Overtime work performed by a 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 counted as at least 2 hours 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 is not limited by the provisions of Section 5542 (a)(2) of Title 5, U.S.C.

### **3.6. ON-CALL DUTY (“BEEPER” OR “PAGER” PAY).**

a. A full-time healthcare professional officially scheduled to be on-call outside his or her regularly scheduled duty hours or on a holiday will be paid 10 percent of his or her applicable overtime rate, pursuant to Paragraph 3.5 and subject to Paragraph 3.9, for each hour of on-call duty. On-call duty will 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 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, the employee will be paid his or her hourly basic rate of pay for non-overtime work 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 counted as at least 2 hours for pay purposes. An employee may not also be paid additional pay for on-call duty for periods that counted as actual work under this provision. The U.S. Comptroller General has opined that overtime pay may be allowed for work conducted on one or a series of telephone calls if it is shown that an employee worked a continuous period equal to the agency’s minimum period for computing overtime. See U.S. Comptroller General Decisions B-205118 and B-217490 for the complete opinions. The immediate manager determines what work constitutes official business.

d. While on-call, 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 scheduled on-call duty is not entitled to pay for such duty.

### **3.7. 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.

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

(2) Compensatory time off should be used as soon as possible after it is earned but not later than the end of the 26th pay period following the pay period in which it is earned. Any unused compensatory time off will be paid at the overtime rate at which it was earned.

(3) A full-time nurse whose basic period of service is two 12-hour periods of service on weekends (i.e., a nurse who is covered by Section 7456 of Title 38, U.S.C.), may not be granted compensatory time off in lieu of overtime pay.

b. An intermittent employee may not be granted compensatory time off in lieu of payment for overtime work.

### **3.8. PAYMENTS DURING PERIODS OF LEAVE AND AUTHORIZED ABSENCE.**

a. A 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 healthcare professional is entitled to any additional pay he or she would have otherwise received.

c. When on annual or sick leave, or on compensatory time off, a 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 healthcare professional is entitled to any otherwise appropriate tour differential pay.

**3.9. HIGHER RATES OF ADDITIONAL PAY FOR NURSES.** Pursuant to the 2014 OPM/DoD Delegation Agreement, Sections 7452(a) and 7453(j) of Title 38, U.S.C., provide the authority to approve higher rates of additional pay to nurses, other than provided for in Paragraphs 3.2. through 3.6.

### **3.10. HEAD NURSE PAY.**

a. Section 7452(a)(2) of Title 38, U.S.C., allows for pay of head nurses to be set two steps higher than would otherwise be applicable when an authorized management official (AMO)

determines it is necessary to provide additional pay to attract and retain registered nurses or nurse anesthetists in head nurse positions. The June 28, 2004 Delegation Agreement between OPM and the DoD, which was replaced by the 2014 OPM/DoD Delegation Agreement, originally permitted the DoD to use this authority. Authority to approve head nurse pay is delegated to the Secretaries of the Military Departments. This authority may be redelegated in writing to the commander of a medical or dental treatment facility, but may not be further redelegated.

b. An AMO may authorize special pay under this policy for head nurse positions that meet the following conditions:

(1) The grade of the position is not based on the application of the General Schedule Supervisory Guide or the General Schedule Leader Grade Evaluation Guide.

(2) The incumbent is officially assigned and performs the following duties and responsibilities for not less than 25 percent of the time:

(a) Plans, coordinates, and collaborates with other health care team members, regarding the activities required to meet the patient's physical, emotional, social, and spiritual needs.

(b) Assigns work based on scope of practice, competencies, priorities, and patient care needs.

(c) Implements nursing care based on desired patient outcomes, customer satisfaction and evidenced-based practice.

(d) Participates in and evaluates the results of customer service, data quality, patient safety and performance improvement activities.

(e) Collaborates with other management staff on resource utilization and stewardship. Applies sound principles of resource management: manpower, budget, and logistics.

(f) Serves as mentor to health care team members. Provides input to supervisor on performance and professional development needs of health care team members.

c. Head nurse pay may be provided when the AMO determines it is necessary to provide additional pay to attract and retain registered nurses or nurse anesthetists in head nurse positions. The AMO must prepare a written determination that, in the absence of head nurse pay, the activity would encounter difficulty with recruitment and retention of head nurses. When head nurse pay is authorized at an individual medical treatment facility, it must be authorized for all eligible nurses in the entire facility, regardless of department. Use of this authority must be applied consistently to registered nurses and nurse anesthetists and must comply with merit system principles.

d. Nature of action code 855 is used to authorize and document "Head Nurse" pay within the Defense Civilian Personnel Data System.

e. The DASD(CPP) will monitor the use of this authority. The Defense Civilian Personnel Data System will be used to obtain information on the employment of head nurses in meeting any reporting requirements.

f. AMOs are responsible for the appropriate use of this authority to support mission requirements. The Secretaries of the Military Departments are accountable for the use and oversight of this authority.

## GLOSSARY

### G.1. ACRONYMS.

AMO	authorized management official
ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
DASD(CPP)	Deputy Assistant Secretary of Defense for Civilian Personnel Policy
OPM	Office of Personnel Management
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

**G.2. DEFINITIONS.** Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

**additional pay.** A premium paid to an employee for working under circumstances or conditions authorized by Sections 7453, 7454, and 7457(a) and (b) of Title 38, U.S.C.; the 2014 OPM/DoD Delegation Agreement; and this volume. Such pay includes tour differential, holiday pay, and pay for weekend duty, overtime work, and on-call duty.

**AMO.** The DoD Component head or an official who is authorized, in writing, to act for the DoD Component head in all determinations of additional pay amounts for certain healthcare professionals covered by this issuance. The DoD Component head may delegate, in writing, to the component's Office of the Surgeon General, the authority to function as the AMO. This authority may be further delegated, in writing, to the command or activity level, but no lower than the executive officer or deputy commander of the command or activity.

**court leave.** Paid time off without charge to leave for service as a juror or witness.

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

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

**in lieu of day.** All full-time employees, including those on flexible or compressed work schedules, are entitled to an "in lieu of" holiday when a holiday falls on a non-work day.

**medical treatment facility.** A DoD facility staffed and equipped to provide inpatient or outpatient medical care to eligible beneficiaries and 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.

**period of service.** 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.

**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 Title 5, U.S.C., or special salary rate authorized by Section 5305 of Title 5, U.S.C.

## REFERENCES

- Code of Federal Regulations, Title 5
- Delegation Agreement between the Office of Personnel Management and the Department of Defense, “Use of Certain Personnel Authorities for Healthcare Occupations,” June 28, 2004
- Delegation Agreement between the Office of Personnel Management and the Department of Defense, “Use of Certain Personnel Authorities for Healthcare Occupations,” July 1, 2014
- DoD Directive 1400.25, “DoD Civilian Personnel Management System,” November 25, 1996
- DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- DoD Directive 5136.01, “Assistant Secretary of Defense for Health Affairs (ASD(HA)),” September 30, 2013
- DoD Instruction 1400.25, Volume 542, “On-Call for Healthcare Personnel,” April 17, 2015, as amended
- Office of Personnel Management General Schedule Leader Grade Evaluation Guide, current edition<sup>1</sup>
- Office of Personnel Management General Schedule Supervisory Guide, current edition<sup>2</sup>
- Office of Personnel Management Nature of Action Codes, current edition<sup>3</sup>
- Public Law 111-163, Caregivers and Veterans Omnibus Health Services Act of 2010, Title VI, Section 601, May 5, 2010
- United States Code, Title 5
- United States Code, Title 10, Section 1599(c)
- United States Code, Title 29, Chapter 8
- United States Code, Title 38
- U.S. Comptroller General Decision B-205118, “Claims for Overtime Pay and Annual Premium Pay,” March 8, 1982<sup>4</sup>
- U.S. Comptroller General Decision B-217490, “Overtime Pay for Standby Duty,” October 4, 1985<sup>5</sup>

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<sup>1</sup> Available on the internet at <http://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/functional-guides/gssg.pdf>

<sup>2</sup> Available on the internet at <http://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/functional-guides/gslead.pdf>

<sup>3</sup> Available on the internet at <http://www.opm.gov/policy-data-oversight/data-analysis-documentation/enterprise-human-resources-integration/MasterFormsList/NOA/index.aspx>

<sup>4</sup> Available on the internet at <http://www.gao.gov/products/480918>

<sup>5</sup> Available on the internet at <http://www.gao.gov/products/449878>