



# Department of Defense **INSTRUCTION**

**NUMBER** 1400.25, Volume 541  
November 17, 2016

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USD(P&R)

**SUBJECT:** DoD Civilian Personnel Management System: Pay Pursuant to Title 38 - Special Rules for Nurses Pursuant to the Baylor Plan

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, in accordance with the authority in DoD Directive 5124.02 (Reference (a)), is to establish and implement policy, establish procedures, provide guidelines and model programs, delegate authority, and assign responsibilities regarding civilian personnel management within the DoD.

b. Volume. This volume reissues Volume 451 of this instruction (Reference (b)) to provide guidelines for scheduling work and compensating nurses pursuant to section 5371 of Title 5, United States Code (Reference (c)) and section 7456 of Title 38, United States Code (Reference (d)), commonly known and referred to in this volume as the “Baylor Plan”), as authorized by section 1104 of Reference (c) and the Delegation Agreement between the Office of Personnel Management (OPM) and the DoD (Reference (e)).

## 2. APPLICABILITY. This volume 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 instruction as the “DoD Components”).

b. Nurses who provide direct patient care services and whose basic workweek consists of two regularly scheduled 12-hour tours of duty on weekends. A nurse covered by this volume is considered a full-time employee for all personnel management purposes, except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings in accordance with section 7456 of Reference (d).

3. POLICY. It is DoD policy that DoD Components that implement the Baylor Plan must do so in accordance with References (c) and (d) and this volume.
4. RESPONSIBILITIES. See Enclosure 2.
5. PROCEDURES. Enclosure 3 provides procedures for scheduling work and compensating nurses pursuant to the Baylor Plan.
6. RELEASABILITY. **Cleared for public release**. This volume is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.
7. EFFECTIVE DATE. This volume is effective November 17, 2016.

A handwritten signature in black ink, appearing to read 'Peter Levine', with a large, stylized initial 'P' and a horizontal line extending to the right.

Peter Levine  
Performing the Duties of the Under Secretary of  
Defense for Personnel and Readiness

Enclosures

1. References
2. Responsibilities
3. Procedures

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- (b) DoD Instruction 1400.25, Volume 541, “DoD Civilian Personnel Management System: Pay Pursuant to Title 38--Special Rules for Nurses Pursuant to the Baylor Plan,” December 1996, as amended (hereby cancelled)
- (c) Title 5, United States Code
- (d) Title 38, United States Code
- (e) Delegation Agreement Between the Office of Personnel Management and the Department of Defense, “Use of Certain Personnel Authorities for Healthcare Occupations,” July 1, 2012<sup>1</sup>
- (f) DoD Directive 5136.01, “Assistant Secretary of Defense for Health Affairs (ASD(HA)),” September 30, 2013
- (g) Title 5, Code of Federal Regulations
- (h) Chapter 8 of Title 29, United States Code

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<sup>1</sup> To obtain a copy, call the Defense Civilian Personnel Advisory Service at 571-372-1676.

ENCLOSURE 2

RESPONSIBILITIES

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)), and in accordance with Reference (a), the ASD(M&RA) has overall responsibility for the development of civilian personnel policy covered by this volume.
  
2. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). Under the authority, direction, and control of the USD(P&R), the ASD(HA) coordinates with the ASD(M&RA), as necessary, on the provisions of this volume as authorized by DoD Directive 5136.01 (Reference (f)).
  
3. 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):
  - a. Supports the development of civilian personnel policy covered by this volume and monitors its execution by DoD Components, ensuring consistent implementation and continuous application throughout DoD.
  
  - b. Serves as the DoD liaison with OPM and other agencies on the provisions of this volume.
  
  - c. Negotiates with OPM concerning Reference (e) as it relates to the provisions of this volume, when necessary.
  
4. DIRECTOR, DOD HUMAN RESOURCES ACTIVITY (DODHRA). Under the authority, direction, and control of the USD(P&R), the Director, DoDHRA provides support to the DASD(CPP), as appropriate, in execution of the duties and responsibilities of this volume.
  
5. DOD COMPONENT HEADS WITH INDEPENDENT APPOINTING AUTHORITY AND DIRECTOR, WASHINGTON HEADQUARTERS SERVICES: The DoD Component heads with independent appointing authority and the Director, Washington Headquarters Services, approve the use of the Baylor Plan for a category of nurse in any DoD medical treatment facility appointed under their authority and ensure that the procedures in Enclosure 3 are followed within their respective organizations.

ENCLOSURE 3

PROCEDURES

1. DOCUMENTATION FOR USE OF THE BAYLOR PLAN. Use of the Baylor Plan must be justified by the medical treatment facility commander and include information required by the ASD(HA) as stated in this section, as well as a certification that sufficient funds exist to cover the costs of implementing the plan. Such records include:

- a. How the authority is used by the facility.
- b. The location of the facility.
- c. The type of occupations covered.
- d. Any other pertinent data that may be required to evaluate the overall use of the authority by the DoD and OPM.

2. ADMINISTRATION OF THE BAYLOR PLAN

- a. The decision to use the Baylor Plan for a category of nurse must be coordinated with the commanders or directors of all other federal healthcare facilities in the local area to ensure that all federal nurses in the same situations are treated the same. Dissimilar staffing situations may be considered to be dissimilar situations.
- b. Use of the Baylor Plan will be based on documented recruitment and retention problems caused by local private and non-federal public scheduling practices for a category of nurse and assumes all other available recruitment and retention strategies have been considered.
- c. When necessary to obtain or retain the services of a category of nurse at a particular activity, the medical treatment facility commander may authorize payment of overtime pay pursuant to section 7453(e) of Reference (d) for all or part of any officially ordered and approved work performed in excess of 40 hours in an administrative workweek. This includes those regularly scheduled hours of work comprising the Baylor workweek.
- d. The medical treatment facility commander will ensure that all qualified nurses receive fair and consistent treatment with opportunities to work pursuant to the Baylor Plan.
- e. The medical treatment facility commander may stop using the Baylor Plan for a category of nurse when the plan is no longer needed to recruit or retain nurses. Discontinuing the plan is not an adverse action. However, any employee affected must be notified of the facility's intent to discontinue the Baylor Plan as soon as practicable before it is terminated.

f. A nurse on the Baylor Plan is deemed to be a full-time employee for all personnel management purposes (except computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings in accordance with section 7456(a) of Reference (d)) including, but not limited to retirement, life insurance, health insurance, workers compensation, and reduction-in-force.

g. A nurse on the Baylor Plan performing work outside the Baylor workweek is eligible for any applicable additional pay pursuant to section 7453 of Reference (d) and Volume 540 of this instruction, including tour differential, holiday pay, and pay for on-call and weekend duty for that work.

h. A nurse on the Baylor Plan is not entitled to additional or premium pay pursuant to section 7453 of Reference (d) or any other applicable law for any period included in his or her regularly scheduled 12-hour tour of duty.

i. When determining the creditability of hours of leave without pay for a within-grade increase for a nurse on the Baylor Plan, the number of hours of leave without pay will be increased by a ratio of 5 hours charged for each 3 hours taken (i.e., each hour of leave without pay will be multiplied by 1.66667).

3. COMPUTATION OF PAY. A nurse on the Baylor Plan is entitled to an hourly rate of basic pay calculated:

a. By dividing the employee's annual rate of basic pay by 1248 (rounded to the nearest whole cent, counting .5 cent and over as 1 cent) for each hour of service **during** the nurse's Baylor workweek. In effect, the hourly rate for a nurse on the Baylor Plan equals 1.6722756 of the nurse's hourly rate of basic pay calculated using the 2087 divisor.

b. Using the 2087 divisor (rounded to the nearest whole cent, counting .5 cent and over as 1 cent) as provided by section 5504 of Reference (c) for each hour of work **outside** the nurse's Baylor workweek that is not determined to be overtime work pursuant to paragraph 2g and section 4 of this enclosure.

4. OVERTIME PAY

a. A nurse on the Baylor Plan is entitled to overtime pay pursuant to section 7453(e) of Reference (d) calculated using the 2087 divisor as stated in section 3 of this enclosure for each hour of work that is:

(1) Within the period beginning at midnight on Friday and ending at midnight the following Sunday, in excess of his or her two regularly scheduled tours of duty;

(2) In excess of 8 hours on a weekday (that is not within the Baylor workweek); or

(3) In excess of 40 hours in an administrative workweek, officially ordered and approved pursuant to paragraph 2.c. of this enclosure.

b. Hours of work during the Baylor workweek will be credited on an hour-for-hour basis when determining the total hours of work performed during an administrative workweek.

c. A nurse covered by this section of this enclosure is exempt from subpart E of part 551 of Title 5, Code of Federal Regulations (Reference (g)) and chapter 8 of Title 29, United States Code (Reference (h)).

d. Compensatory time off in lieu of overtime pay is prohibited for a nurse on the Baylor Plan.

## 5. TREATMENT OF HOLIDAYS AND LEAVE

a. A nurse on the Baylor Plan who is excused or prevented from working on a holiday that falls on a regularly scheduled workday during the Baylor workweek may not be charged leave or lose pay for that holiday.

b. Annual and sick leave is charged at a rate of 5 hours for each 3 hours of absence.

c. Accrued annual leave donations and contributions made pursuant to subparts I and J of part 630 of Reference (g) are deducted from a nurse's leave balance on an hour-for-hour basis. When a nurse is in a shared leave status (i.e., using transferred leave pursuant to subparts I and J of part 630 of Reference (g)), he or she is charged 5 hours of leave for each 3 hours of absence.

d. Military leave and court leave are the only types of leave that may be applied, as appropriate, to workdays outside the nurse's Baylor workweek.

e. Upon separation or retirement, a nurse on the Baylor Plan is entitled to a lump-sum payment for his or her accrued and accumulated annual leave based on the employee's hourly rate of basic pay calculated using the 2087 divisor as stated in section 3 of this enclosure.

## GLOSSARY

### PART I: ABBREVIATIONS AND ACRONYMS

ASD(HA)	Assistant Secretary of Defense for Health Affairs
ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
DASD(CPP)	Deputy Assistant Secretary of Defense Civilian Personnel Policy
DoDHRA	Department of Defense Human Resources Activity
OPM	Office of Personnel Management
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

### PART II: DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this volume.

additional pay. A premium paid to a nurse for work outside the Baylor workweek under circumstances or conditions authorized by section 7453 of Reference (d). Such pay includes tour differential, holiday pay, overtime pay, and pay for weekend or on-call duty.

administrative workweek. A period of 7 consecutive calendar days coinciding with the calendar week, Sunday through Saturday.

Baylor Plan. An alternate schedule workweek identified in section 7456 of Reference (d) that allows nurses who provide direct patient care services to work two regularly scheduled 12-hour tours of duty on weekends.

Baylor workweek. Two regularly scheduled 12-hour tours of duty entirely within the first and last day of the administrative work week; i.e., Sunday and Saturday. The Baylor workweek is considered to be a full 40-hour workweek for pay and leave accrual purposes.

category of nurse. A nurse or group of nurses who perform services within a specialization of the nursing occupation; e.g., operating room nurse, critical care nurse.

medical treatment facility. A DoD health facility staffed and equipped to provide inpatient 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 (c) or special salary rate authorized by section 5305 of Reference (c) and section 7455 of Reference (d).

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

weekend. The period from midnight on Friday until midnight the following Sunday.