

Material Transmitted:

HHS Instruction 590-1, Title 38 Physician Special Pay

Material Superseded:

None.

Background:

This is the first Departmental Instruction to be published on the subject of payment of Physician Special Pay (PSP) based on 38 U.S. Code, Chapter 74, and the U.S. Office of Personnel Management (OPM) Title 38 Delegation Agreement. It was written to provide clear, consistent guidance to the health agencies and to abide by the USOPM/DHHS delegation agreement which requires a Departmental plan of action for the implementation of Title 38.

Any reference to "OPDIV" in this Instruction now includes AHCPR, ATSDR, CDC, FDA, HRSA, IHS, NIH, SAMHSA, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AOA.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws, the USOPM/DHHS delegation agreement, and bargaining agreements.

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Assistant Secretary for
Management and Budget

INSTRUCTION 590-1

Distribution: MS (PERS): HRFC-001

Internet Note: Copies of Exhibit 590-1-A (HHS Form 691) and Exhibit 590-1-B (HHS Form 691-1) will only be found as separate attachments to the PDF copy of this document. They are also available at <http://forms.psc.dhhs.gov/hhsforms.htm>

HHS PERSONNEL INSTRUCTION 590-1
TITLE 38 PHYSICIAN SPECIAL PAY

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590-1-00 PURPOSE

This Instruction describes HHS regulations and procedures for payment of Physician Special Pay (PSP) to physicians and dentists.

590-1-10 COVERAGE AND EXCLUSIONS

A. Coverage

This Instruction covers civilian physicians at GS-15 and below (or in an equivalent substitute grading system, e.g., Title 38 rank-in-person system) who:

1. provide direct patient care services, or services incident to patient care; and
2. have been designated for coverage by appropriate authority.
3. As used in this document, references to physicians include both physicians and dentists, unless otherwise noted.

B. Categorical Exclusions

This instruction does not apply to physicians who are:

1. currently serving in the PHS Commissioned Corps;
2. serving in an internship or residency training program;
3. reemployed annuitants;
4. in the SES, ES, SL/ST, SBRS, EL, EX, or other senior-level systems;
5. receiving Physicians Comparability Allowance (PCA) under 5 U.S.Code 5948;
6. employed or paid under a Title 42 authority;
7. serving on an intermittent appointment;
8. employed on a part-time basis with a scheduled tour of duty of less than 20 hours per pay period; or
9. serving in positions or categories of positions that have been determined by the Operating Division (OPDIV) head or his/her designee as having no significant recruitment/retention problem.

C. Former Members of the Uniformed Services

Former members of the uniformed services, i.e., the Army, Navy, Air Force, Marines, Coast Guard, National Oceanic and Atmospheric Administration and the PHS Commissioned Corps, may receive Physician Special Pay.

Regulations governing a former member's reemployment, annuity reduction, repayment of outstanding uniformed service obligations, entitlement to travel and transportation, annual leave transfer, etc., may be obtained from the Director, Division of Commissioned Personnel, Office of the Surgeon General, for PHS Commissioned Corps Officers. For former members of other uniformed services, similar information may be obtained from the employing office of the appropriate service branch.

D. Scholarship Obligees and Loan Recipients

1. Physicians who are fulfilling a service obligation in connection with the National Health Service Corps or other Federal medical scholarship or training programs are eligible to receive Physician Special Pay, on a case-by-case basis, with the approval of the OPDIV head.^{1/} PSP normally will be paid to such obligees only when it is determined to be essential to the retention of the individual.
2. Physicians who are receiving student loan repayment assistance under Section 5379 of Title 5 or similar authority are eligible to receive Physician Special Pay on a case-by-case basis, with the approval of the OPDIV head. The amount of PSP that normally would be paid to loan repayment recipients may be offset by an amount up to the annual loan repayment. Physician Special Pay factors that may be reduced under this provision include: Scarce Medical Specialty Pay, Executive Responsibility Pay, Pay for Exceptional Qualifications Within a Specialty, and Geographic Location Pay.

590-1-20 REFERENCES

- A. 38 U.S. Code, Chapter 74 (law - veterans health administration - personnel)
- B. 5 U.S. Code 5371 (law - health care positions)
- C. C. Public Law 93-638, Section 102(e) - (h) (Indian Self-Determination and Education Assistance Act)
- D. Public Law 99-221, Section 3(a) (Cherokee Leasing Act)
- E. U.S. Office of Personnel Management Title 38 Delegation Agreement, dated June 30, 1997

590-1-30 POLICY

A. Discretionary Application

PSP is available for use to recruit and retain highly qualified physicians. Payment of PSP is optional in each OPDIV. However, if paid to a position or specific category of positions, other physicians performing the same or similar duties in the same OPDIV must be considered for PSP.

^{1/}Throughout this Instruction, references to OPDIV head infers authorities may be redelegated.

Within budgetary constraints, HHS policy is to compensate physicians at levels reasonably comparable with those paid to other Federal sector physicians in the same local area.

B. Establishment of PSP Amounts

PSP amounts for physicians will be established on an individual basis according to the special pay factors in Section 590-1-50, below, and HHS Form 691 - Request for Special Pay for Physicians and Dentists.

Exhibit 590-1-C describes approval authorities for each of the special pay factors.

C. Relationship to Basic Pay

PSP is basic pay for purposes of Federal Employees Group Life Insurance. Subject to the conditions in Section 590-1-80, below, PSP is also basic pay for civil service retirement purposes under 5 U.S. Code Chapters 83 and 84, including the Thrift Savings Plan. It is basic pay for Workers Compensation subject to the statutory maximum in Chapter 81, Title 5, U.S. Code. It is also basic pay for Continuation of Pay under Chapter 81, Title 5, U.S. Code where applicable.

PSP is not basic pay for other pay administration purposes such as severance pay, highest previous rate, or lump sum leave payments. PSP is paid for hours in a pay status only.

D. Relationship to Premium Pay Under Title 5

Physicians who receive PSP may not:

1. be paid overtime for work in excess of 8 hours per day, 40 hours per week, or 80 hours per pay period;
2. earn compensatory time off; or
3. receive any other form of premium pay under Chapter 55 of Title 5, U.S. Code, e.g., Sunday, holiday, night pays.

E. Other Discretionary Pay Under Title 5

Physicians who receive PSP may receive other forms of discretionary pay under Title 5, such as awards, Recruitment and Relocation Bonuses and Retention Allowances (5 U.S. Code 5753 and 5754). However, they are not eligible to receive a Physicians Comparability Allowance under 5 U.S. Code 5948.

The sum of all pay components paid to a physician under Title 5 authority is limited on an annual basis to the rate of pay for EX-1.

F. Aggregate Compensation Limits

Total compensation of physicians receiving PSP under Title 38 authority, basic pay, and other supplemental pay under Title 5 cannot exceed the amount of annual pay received by the President of the United States as specified in Section 102 of Title 3 (\$200,000 as of the effective date of this Instruction).

G. Employee Service Agreements

Service agreements are required for physicians who receive PSP. HHS Form 691-1, Employee Service Agreement, will be used for this purpose.

1. Service agreements will be for a minimum period of one year (26 pay periods) and a maximum of four years (104 pay periods), and must be in one year increments. The length of the service agreement will be determined on a case-by-case basis in negotiations between the physician and designated management officials.
2. Service agreements are employee commitments to remain in a position for a specified period of time. They are not management contracts for employment nor compensation, and do not preclude or limit the employer's right to take corrective or disciplinary actions including termination of PSP.
3. The total amount of special pay reflected on the service agreement may be adjusted to reflect changes in the Length of Service or Board Certification, changes to or from a full-time tour of duty, changes to the

percentage of time devoted to a scarce medical specialty or executive responsibility, or to correct an administrative error.

4. Except as provided in 5. and 6., below, employees who voluntarily or because of misconduct fail to complete the period of service specified in the service agreement will be required to refund the amount of PSP received in the service agreement year as follows:
 - a. 100 percent of PSP monies received during the first year for failure during the first year;
 - b. 75 percent of PSP monies received during the second year for failure during the second year;
 - c. 50 percent of PSP monies received during the third year for failure during the third year; and
 - d. 25 percent of PSP monies received during the fourth year for failure during the fourth year.
5. Repayment will be waived when failure to complete the service agreement results from:
 - a. reduction-in-force;
 - b. transfer of function; or
 - c. directed reassignment in connection with a reorganization announced in writing by the employing agency.
6. Repayment may be waived in other cases when failure to complete the service agreement is the result of circumstances beyond the employee's control. Such waivers must be documented on a case-by-case basis and submitted by a management official in memorandum format, and must describe:
 - a. the circumstances necessitating the termination of service in the position for which PSP was paid;
 - b. the period of service that has yet to be completed; and

- c. the amount of PSP that was approved and the amount to be waived.

A copy of the Request for Special Pay for Physicians and Dentists, the Employee Service Agreement, and the Notification of Personnel Action initiating PSP should be forwarded with the memorandum to the approving official.

7. Physicians who accept a management-initiated offer to enter into a new service agreement will have any unfulfilled period of service under the superseded agreement waived. However, the new agreement must cover at least the time remaining under the old.
8. Physicians who convert from a Physicians Comparability Allowance (PCA) Agreement to a Physicians Special Pay Agreement must sign an agreement which covers at least the time remaining under the PCA agreement, but not less than one year.
9. Service agreements will be signed by the employee only after the HHS 691 has been approved by the approving official and the amount of PSP has been recorded on the service agreement.
10. The terms used on the Request for Special Pay will determine the nature of the service agreement:

New Agreement: An agreement with a physician who was not previously receiving PSP.

Renewal Agreement: An agreement with a physician who has been receiving PSP.

Amendment: A change in the terms of an existing agreement.

H. Effective Dates

PSP will usually be effective at the beginning of the pay period immediately following approval by the approving official or on a later date specified on HHS Form 691. Occasionally, employees enter on duty (EOD) on a day other than the first day of a pay period. When that occurs,

agreements may be effective coincident with the employee's EOD date.

A new service agreement may be negotiated prior to the expiration date of a previous agreement with the mutual agreement of management and the employee.

PSP may not be approved retroactively. However, an administrative error may be corrected retroactively.

I. Payment of PSP

PSP will be paid on a biweekly basis and will continue for the period of time specified in the service agreement, unless terminated under the conditions specified in J. below.

J. Termination of PSP

PSP agreements initiated at the beginning of a pay period will generally be terminated on the last day of the 26th, 52nd, 78th, or 104th pay period. It is advisable to negotiate future agreements effective at the beginning of a pay period, so subsequent agreements coincide with the beginning of a pay period.

Any of the following conditions will result in the termination of PSP prior to the date specified in the service agreement:

1. a significant change in the duties and responsibilities of the physician's assignment. Such changes normally would be reflected in a personnel action, e.g., promotion, change-to-lower-grade, reassignment to a new position with significantly different duties;
2. separation of the employee from his/her position or employing organization due to transfer, resignation, retirement, etc.;
3. change in tour of duty to a less than quarter-time status; or
4. execution of a superseding agreement.

A PSP agreement normally will not be terminated if the employee is subject to a personnel action that does not involve a position change, e.g., reassignment to a successor position as a result of reorganization. In such a case, an amended HHS-691 should be prepared as described in Section 590-1-60D.

K. Renewals of or Amendments to PSP

1. PSP is subject to renewal at the expiration of the service period required in the original agreement. At the time of renewal, the basis for each special pay factor amount will be reviewed and adjusted as appropriate.
2. Amendments to the PSP amount may be made (without affecting the period of service obligation specified in the original service agreement) when a physician is affected by changes in Board Certification or Length of Service; is reassigned with no major change in duties or change in compensation; or when the tour of duty changes to or from full-time.

L. Outside Work

Because of the work obligation associated with full-time status, full-time physicians who wish to perform outside work must submit a prior written request under established agency procedures. Any activity interfering or conflicting with the employee's work obligation will be disapproved.

M. Part-Time Service

Part-time physicians who have a tour of duty of at least 20 hours per pay period may be offered PSP. PSP amounts for the special pay factors in Exhibit 590-1-D will be prorated for part-time service with the exception of the Full-Time Status factor that is payable only to full-time physicians. Proration of other factors will be based on the number of hours in the employee's regular tour of duty, but must not exceed 75 percent of the amount that would be paid if the physician were full-time. The 75 percent maximum PSP payment will be applied on a pay period basis.

N. Relationship to Leave Under Title 5

Physicians who receive PSP continue to be covered by the leave provisions of Chapter 63 of Title 5.

590-1-40 RESPONSIBILITIES

- A. OPDIV heads are responsible for ensuring that merit system principles and the requirements of the Title 38 statute, the USOPM/DHHS delegation agreement, and this Instruction are followed in their use of Physician Special Pay.
- B. OPDIV heads are responsible for sharing information regarding the OPDIVs use of facility-specific Scarce Medical Specialty Pay and Geographic Location Pay with other Federal facilities that use Title 38 Physician Special Pay provisions and are collocated with an OPDIV field facility.
- C. OPDIV heads are responsible for reviewing requests for approval of outside work activities from full-time physicians for possible conflict of interest with work obligations incurred in connection with payment of the Full-Time Status factor.
- D. OPDIV heads are responsible for maintaining auditable program records, and participating in evaluation of this authority by USOPM, DHHS, or other administrative authority.
- E. The Assistant Secretary for Management and Budget (ASMB) is responsible for obtaining the concurrence of the Interagency Committee for Health Care Occupations on the HHS Physician Special Pay Plan.
- F. The ASMB is responsible for sharing information regarding the use of Scarce Medical Specialty Pay on a nationwide basis or within the Washington, D.C. metropolitan area, and Geographic Location Pay in the Washington, D.C. metropolitan area, with other Federal agencies that use Title 38 Physician Special Pay.
- G. The ASMB is responsible for preparing the annual report of use of Physician Special Pay required in the USOPM/DHHS delegation agreement and for participating in the evaluation of this authority by USOPM, DHHS, or other administrative authority.

- H. Personnel Officers with appointing authority are responsible for reviewing and certifying that PSP requests and service agreements for employees they service comply with the provisions of law, the USOPM/DHHS delegation agreement, and this Instruction.

Exhibit 590-1-C provides a summary of the major PSP authorities and the level at which they are applied.

590-1-50 SPECIAL PAY FACTORS

Amounts of Special Pay factors are addressed in Exhibit 590-1-D.

A. Full-Time Status

Physicians employed on a full-time basis shall be paid PSP for full-time status and are considered to be in on-call status 24 hours a day, 7 days a week. This factor is to be uniformly applied to covered physicians. The amount may not be negotiated nor may it be prorated for part-time service.

B. Length of Service

1. Length of Service rates must be applied uniformly to all covered physicians.
2. In calculating length of service for payment of this factor, the following types of service are creditable:
 - a. service as a civilian physician in the Public Health Service under Title 5 or Title 42, U. S. Code or as a uniformed Medical Officer in active service of the PHS Commissioned Corps. (Note: Service to the Public Health Service under a non-employment program is not creditable toward the length of service calculation.)
 - b. employment with an Indian Health Service tribal government or organization, for which the employee maintained Federal retirement benefits under Chapter 83 or 84 of 5 U.S. Code upon separation from Federal service. See Section 102(e)-(h) of Public Law 93-638, and Public Law 99-221, section 3(a) for further information.

- c. employment as a physician of the Veterans Health Administration under: 38 U.S. Code 7306, or former authority; 38 U.S. Code 7401 (1), or former authority; 38 U.S. Code 7405-7407; or under a career residency, VA fellowship, or other VA employment creditable in length of service determinations within the VA.
3. Years of service will be calculated on the basis of 365 calendar days for one year of service. Service years may not include LWOP or other service in a non-pay status exceeding six months in a calendar year.
4. Individuals become eligible for this component of special pay at the beginning of the first pay period following completion of the required years of service.

C. Scarce Medical Specialty

This component of special pay is payable to a physician who is specialty-trained and provides services in a specialty for which the agency has determined there is an **extraordinary** difficulty in recruitment/retention.

1. Establishment of Categories for Scarce Medical Specialty:
 - a. Scarce Medical Specialty Pay may be established on a nationwide basis or on the needs of a specific facility.
 - b. Facility-specific Scarce Medical Specialty Pay may be established only when Geographic Location Pay is not sufficient to address the recruitment/retention needs of the facility.
 - c. The dollar range of pay for a specific Scarce Medical Specialty for physicians must be from \$0 to \$40,000; for dentists the amount must be from \$0 to \$20,000.
 - d. In determining the need for Scarce Medical Specialty Pay and in setting the range of pay for the specialty, the approving official will consider:
 - (1) the success of recent efforts to recruit high quality candidates to the specialty position or

category, including indicators such as vacancy rates, turnover rates, duration of vacancies, offer acceptance rates;

- (2) recent turnover in the specialty;
 - (3) compensation earned by physicians in the specialty in competitor organizations, as shown in published salary surveys such as those conducted by the American Medical Association, the American Academy of Medical Colleges, the HAY Associates, the Wyatt Company, etc., or in a locally-conducted survey; or for dentists, as shown in published salary surveys such as those conducted by the American Dental Association, American Association of Dental Schools;
 - (4) labor-market factors that may affect the ability of the OPDIV to recruit or retain quality candidates in the specialty or category now or in the future, e.g., assessment of availability of specialized skills in the labor market, discussion of physician supply from graduate medical/dental programs;
 - (5) the cost of contract services that have been used to provide the specialty service; and/or
 - (6) any other factors that reflect on the ability of the OPDIV to recruit and/or retain physicians in the specialty or category.
- e. The requirements of d. above, will be waived when another Federal agency has established Scarce Medical Specialty Pay for a specialty, either nationwide or on a specific geographic basis. In such cases, HHS Scarce Medical Specialty Pay may be established, with no further documentation required, for that specialty in the same geographic area.

Proposed rates that expand the geographic area of application will require additional documentation of need as described in d., above.

- f. Officials who propose to establish facility-specific Scarce Medical Specialty Pay in a location where other Federal health care facilities are located must: (1) inform any other collocated HHS facilities or other Federal facilities that use the provisions of Title 38, of the intent to recommend or establish facility-specific pay, and (2) share information regarding the salaries and labor market conditions for the specialty concerned.
 - g. OPDIVs will maintain a list of approved facility specific Scarce Medical Specialty/ies and a record of the justification used in establishing both the need for and the amount of the Scarce Medical Specialty Pay. The OPDIV will provide this information to the Office of Human Resources, Assistant Secretary for Management and Budget (OHR/ASMB) within 15 days of approval.
 - h. Both nationwide and facility-specific Scarce Medical Specialty Pay will be subject to an annual review for continued designation as a scarce specialty and for the appropriateness of the range of pay established (see Section 590-1-70). Reviews will be performed by the designated official, and will focus on any changes in: 1) labor market factors that may impact on the OPDIV's ability to recruit and/or retain physicians in the specialty, and 2) the compensation of physicians in the specialty as reported in published salary surveys (see Section 1.d.(3) above). Records of reviews will be maintained as part of the agency's plan for using Physician Special Pay and provided to OHR/ASMB.
2. Application of Scarce Medical Specialty Pay to Individuals
- a. The amount of Scarce Medical Specialty Pay to be paid to an individual will be based on an assessment of:
 - (1) the individual's qualifications and skills in the specialty area, as shown by academic credentials or work experience;

- (2) the relevance of the individual's qualifications and skills to the position concerned;
- (3) the length of time the physician agrees to serve in the position; and/or
- (4) other relevant factors.

Approving officials may use the services of a physician peer review group or a standards review board to recommend the amount of Scarce Medical Specialty Pay to be paid.

- b. Individuals who perform multiple roles, e.g., Service Chief who also performs Scarce Medical Specialty duties, may receive Scarce Medical Specialty Pay only for the proportion of time they actually work in the specialty. The proportion will be expressed as an annual percentage of time spent in the Scarce Medical Specialty. The percentage will be established at the time of the initial service agreement and must be verified prior to renewal of a service agreement. The percentage of time must be recorded in the position description and in Block 4 of HHS Form 691.

D. Executive Responsibility Pay

1. This component of special pay is payable to individuals who provide services as a Service Chief or Chief of Staff.

Note: Although the USOPM/DHHS Delegation Agreement references all of the executive positions described in Section 7433(b)(4) of Title 38, the following positions or grades may not be applied within HHS: Director Grade, Deputy Service Director, Service Director, Deputy Assistant Chief Medical Director, Assistant Chief Medical Director, Associate Chief Medical Director, Deputy Chief Medical Director, and Medical Director. Since these VA positions/grades are equivalent to Title 5 supergrade positions, i.e., SES, SL/ST, etc., and the legal authority for application of T.38 authorities within HHS is limited to GS-15 and below, these levels are not currently available to HHS.

2. Physicians who perform multiple roles, e.g., a Service Chief who also performs clinical duties, may receive Executive Responsibility Pay only for the proportion of time they actually devote to executive work. In such cases, the proportion of time will be expressed as an annual percentage of time spent in the executive assignment. The percentage will be established at the time of the initial PSP request and prior to renewal of PSP. The percentage of time must be recorded in the position description and in Block 4 of HHS Form 691.
3. Eligibility for Executive Responsibility Pay will be Based on the following definitions:

- a. Service Chief

To be considered a Service Chief, a physician must

- (1) head a recognized organizational unit that provides direct patient care services or services incident to patient care **and** provide technical supervision to one or more physicians or other health care professionals; **or**
- (2) be the Clinical Director at an outpatient or free-standing clinic.

- b. Chief of Staff Positions

To be equivalent to a Chief of Staff, a physician must

- (1) be a second-level supervisor; **and** manage an organizational unit that is subdivided into distinct functional groups; **or**
- (2) be the Clinical Director of a hospital.

OPDIVs will establish and maintain a list of positions to which these provisions apply, and maintain the list as part of the plan for using Physician Special Pay. . . .

4. Setting Individual Executive Responsibility Pay

- a. The amount of Executive Responsibility Pay will be established individually within the statutory ranges shown in Exhibit 590-1-D.
- b. In setting the amount to be paid, the deciding official will assess:
 - (1) the individual's executive qualifications and skills as shown by work experience and/or training;
 - (2) the relevance of the individual's executive experience to the position;
 - (3) length of assignment as a Service Chief or Chief of Staff in the position or comparable positions;
 - (4) the complexity of the organization managed; and
 - (5) any other factors that reflect on the physician's ability to perform the executive assignment.

E. Board Certification Pay

1. This component is payable to individuals who have one or more current specialty certificates or subspecialty certificates from the American Board of Medical Specialties, the Advisory Board for Osteopathic Specialists, or the Council on Dental Education, American Dental Association.

At the request of an OPDIV head, the Assistant Secretary for Health will consider the designation of certificates from other board organizations. Requests must provide a comprehensive discussion of the nature of the organization's boarding process and a discussion of whether application has been made for recognition of the board by the certifying agencies noted above.

2. The amount of pay for a specialty certification or first Board certification is established by statute at \$2,000. The amount for a subspecialty certification or secondary

board certification is an additional \$500. These rates are applied uniformly to all physicians and dentists who possess the board certifications noted in paragraph 1., above. The maximum amount of pay for this component is \$2,500.

3. Individuals entering into service agreements will record their current board certification status on the Employee Service Agreement, HHS 691-1, provide a copy of their certification to agency officials, and inform their supervisor of any change to their board status. Payment will be based on this record of board status and will be discontinued if the certification is rescinded, suspended, or expired.

F. Geographic Location Pay

This component is payable to physicians who provide services in a specific category of position or specialty at a geographic location for which there is an **extraordinary** difficulty in the recruitment/retention of qualified physicians.

Establishment of Geographic Location Pay

1. Geographic Location Pay may be established on a specific geographic basis, i.e., regional, area-wide, city-wide, etc., or on the needs of a specific facility.
2. Geographic Location Pay will be established at a flat rate of pay within the statutory maximums reflected in Exhibit 590-1-D.
3. The payment of geographic pay to individual physicians within the category or specialty will be uniform, unless a specific exception is approved in writing. The reasons for such exceptions must be documented and maintained with the HHS Form 691.
4. In determining the need for Geographic Location Pay and in setting the rate of pay for the location, the following will be considered:
 - a. the success of recent efforts to recruit high quality candidates in the position or category, including

- indicators such as vacancy rates, turnover rates, duration of vacancies, offer acceptance rates;
- b. recent turnover in the position or category;
 - c. the compensation earned by physicians in the category in competitor organizations, as shown in published salary surveys;
 - d. the characteristics of the geographic area, as shown by:
 - (1) a comparative assessment of the cost-of-living for the area versus "standard city" data. A Runzheimer International Two-Location Living Cost Comparison will be used for this purpose; and/or
 - (2) a description of any adverse factors that might impede the recruitment or retention of physicians to the location, i.e., remoteness of site, lack of educational or other services, etc.;
 - e. labor-market factors that may affect the ability of the agency to recruit or retain quality candidates in the category now or in the future, e.g., assessment of availability of required skills in the labor market, discussion of physician supply from graduate medical programs;
 - f. the cost of contract services that have been used to provide the service; and/or
 - g. any other factors that reflect on the ability of the OPDIV to recruit and/or retain physicians in the positions or category at the geographic location.
5. The requirements of 4.d., above, will be waived when Another Federal agency has established Geographic Location Pay for the same geographic area. In such cases, no further documentation is required for the same category or specialty in the same geographic area.

Expansion of the geographic area of application, or the category of physician to which the pay applies will require documentation of need as described in 4.d. above.

Prior to authorizing a rate for an OPDIV facility (ies) on the basis of a VA authorization, OPDIV officials must consult local VA officials to determine the rate of pay established in the geographic area, the date of authorization of the Geographic Location Pay, and the date it will expire.

6. An official who proposes to establish Geographic Location Pay where other Federal health care facilities that use the provisions of Physician Special Pay under Title 38 are collocated must: (1) inform those facilities of the intent to establish Geographic Location Pay, and (2) share data regarding geographic or labor market conditions and salary information.
7. OPDIVs must maintain a list of approved Geographic Location Pay as part of the plan for PSP, and provide the list to ASMB Office of Human Resources within 15 days of approval.

G. Pay for Exceptional Qualifications Within a Specialty

1. This factor is available for payment to physicians who possess exceptional qualifications within a specialty, when the total physician special pay that would be payable does not exceed the total amount of PSP that may be paid, under factors A.- F., above, to other physicians who:
 - a. possess the same length of service, and
 - b. are assigned to the same specialty and position.
2. This factor must be justified individually on a case-by-case basis and must reflect an assessment of the physician's exceptional qualifications.
3. In determining Pay for Exceptional Qualifications within a Specialty, the following will be considered:

- a. the outstanding or unique nature of the individual's experience or educational background;
 - b. the relevance of the individual's background to the specific needs of the employing organization; or
 - c. the individual's stature within his/her field as evidenced by:
 - (1) presentations or invitations to speak at national or international professional meetings and conferences;
 - (2) authorship of publications, such as articles in refereed journals or books;
 - (3) requests for advice or consultation from physicians outside the employing organization; and
 - (4) other similar factors.
4. The comparative review of special pay amounts for physicians with the same length of service, specialty and position concerned will be done within the primary organizational unit in which the physician is employed. Documentation of the comparative review done must be attached to the Form HHS 691.

590-1-60 CASE DOCUMENTATION, PROCEDURES AND PROCESSING

A. New or Renewal Actions

Management officials proposing Physician Special Pay must complete HHS Form 691 and provide:

1. written justification if a proposed action includes the use of Exceptional Qualifications within a Specialty;
2. written justification of the amount of Scarce Medical Specialty pay and/or Executive Responsibility Pay for cases where total proposed compensation exceeds EX-1;
3. a copy of the candidate's/employee's qualifications statement or curriculum vitae;

4. the position description;
 5. a copy of the proposed (unsigned) Employee Service Agreement that will be negotiated with the employee once PSP is approved; and
 6. any other relevant information.
- B. Information listed in A. should be forwarded by the recommending official to the approving official for review and approval.
- C. Once approved, cases will be forwarded with supporting documentation to the servicing personnel office for:
1. completion of the Employee Service Agreement;
 2. processing of a Notification of Personnel Action (SF-50); and
 3. maintenance of records in the employee's Official Personnel Folder (OPF). Note: Maintain supporting documentation on the left side of the OPF for two years from the expiration of the service agreement.
- D. Procedures for Amendment of PSP
1. Personnel offices will complete HHS Form 691, for an Amendment action (see 590-1-30K.2). Only the signature of the Personnel Officer is required.
 2. Attach the completed amendment to the original Form 691 in the OPF.
 3. A new service agreement, Form HHS 691-1, is not required.
 4. A copy of the Form HHS 691 documenting the amendment will be provided to the employee.

590-1-70 ANNUAL REVIEW REQUIREMENTS AND PROCEDURES

By September 30 of each year, the following special pay factors will be reviewed by the approving official for continued appropriateness and any adjustment necessary:

1. the uniform HHS Length of Service rates;
2. designation of specialties or categories approved for receipt of nationwide Scarce Medical Specialty Pay and the rates or ranges assigned to each approved category;
3. designation of the specialties or categories approved for facility-specific Scarce Medical Specialty Pay and the rates or ranges assigned to each approved category;
4. Geographic Location Pay; and
5. the approved list of board specialties recognized for Board Certification Pay.

Committees may be used to conduct such reviews and to make recommendations to the approving official.

The elements considered in maintaining or revising authorizations, as described in Section 590-1-50., above, will be documented as part of the review record. Copies of completed reviews will be maintained as part of an OPDIV's plan for use of PSP for authorities delegated to the OPDIV head. The ASMB, Office of Human Resources, will maintain records of reviews for authorities delegated to the ASMB.

590-1-80 ANNUITY CONTRIBUTIONS AND CALCULATIONS

- A. The total amount of Physician Special Pay paid under this authority is subject to employee deduction for civil service annuity purposes under 5 U.S. Code, Chapters 83 and 84, at the rates established in those Chapters. The employing agency also will make annuity contributions from the appropriation or other fund used to pay the employee. Agency contributions will be at the percentage rates specified for basic pay contribution under 5. U.S. Code, Chapters 83 and 84.
- B. Except as provided in D., below, a physician who enters into a Physician Special Pay Agreement must complete 15 years of retirement-creditable service as defined in paragraph C., below, in order to have Physician Special Pay included as basic pay in determining the civil service annuity.

In addition, for physicians with service that precedes the authorization of PSP, there is an 8 year phase-in of the use of PSP in the calculation of annuity. This phase-in will begin on the date of the physician's initial PSP contract or the date HHS received the authority to begin paying PSP, whichever is later. In such cases, PSP will be counted in the annuity computation on the basis of 25 percent for every 2 years of post-PSP service.

C. Retirement creditable service includes service as:

1. a civilian physician in the Public Health Service under Title 5 or Title 42. Note: Service in the Public Health Service under a non-employment program is not creditable toward the length of service calculation;
2. employment with an Indian Health Service tribal government or organization, for which the employee maintains Federal retirement benefits under Chapter 83 or 84 of 5 U.S. Code upon separation from Federal service. See Section 102(e)-(h) of Public Law 93-638, and Public Law 99-221, section 3(a) for further information; and
3. employment as a physician of the Veterans Health Administration under: 38 U.S. Code 7306, or former authority; 38 U.S. Code 7401 (1), or former authority; 38 U.S. Code 7405-7407; or under a career residency, VA fellowship, or other VA employment creditable within the VA.

Note: Service in the PHS Commissioned Corps is not creditable toward the service requirements for annuity calculation.

- D. Fulfillment of the 15 year creditable service requirement or the 8 year phase-in is not required for annuities paid under 5 U.S. Code 8337 or 8451, relating to disability retirement, or 5 U.S. Code 8341(d) or (e) or 8442(b) or 8443, relating to survivor annuities.
- E. Physicians who retire and who do not meet the 8 year phase-in or the 15 year service requirement, as applicable, are not entitled to a refund of retirement deductions from PSP.

- F. Physicians who: 1) resign or are separated from Federal service; 2) meet eligibility requirements for refund of retirement deductions; and 3) make appropriate application for refund may receive the employee retirement contributions from Physician Special Pay as part of their refund amount.

590-1-90 EVALUATION AND REPORTING

OPDIV personnel officers will complete an annual assessment of the overall effect of the payment of Physician Special Pay on the ability of the OPDIV to recruit or retain high quality physicians. The report will reflect the status as of December 31, and will be due on January 31. The following format will be used for this assessment:

I. **Narrative.** This should be a brief but descriptive account of agency activities regarding PSP.

- A. Coverage
- B. Oversight
- C. Use of Medical Advisors for PSP

II. **Effect of PSP on Recruitment and Retention of Physicians (including both positive and negative influences).**

- A. Retention
- B. Recruitment

III. **Problematic Issues**

HHS Exhibit 590-1-C Summary of Title 38 Physician Special Pay Delegations of Authority Page 1

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AUTHORITY	HELD BY	DELEGATED TO	REMARKS
1. Establish Title 38 Physician Special Pay regulations and procedures	ASMB		
2. Approve requests for PSP when proposed total compensation exceeds Executive Level I	ASMB	OPDIV heads	
3. Approve PSP for individuals reporting directly to the OPDIV head	ASMB	OPDIV heads	
4. Establish uniform HHS Length of Service rates	ASMB		
5. Establish nationwide Scarce Medical Specialty ranges for a specialty or subspecialty	ASMB		
6. Designate a specialty or subspecialty for Board Certification Pay	ASMB	OPDIV heads	
7. Establish Scarce Medical Specialty ranges for a specific facility(ies) when more than one OPDIV has facilities collocated in the same geographic area	ASMB	OPDIV heads	Requires collaboration and agreement with other collocated OPDIVs; ASMB approval is required in the absence of consensus.
8. Establish Geographic Location Pay for a specific category/categories of physicians when more than one OPDIV has facilities collocated in the same geographic area	ASMB	OPDIV heads	Requires collaboration and agreement with other collocated OPDIVs; ASMB approval is required in the absence of consensus.
9. Determine the categories of physicians or positions that will be considered for PSP	ASMB	OPDIV heads	
10. Approve requests for Exceptional	ASH/ASMB	OPDIV heads	

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Qualifications Pay			
11. Approve individual PSP for employees at the rates and/or within the ranges authorized.	ASMB	OPDIV heads	
12. Approve exceptions to Geographic Location Pay	ASMB	OPDIV heads	
13. Establish Scarce Medical Specialty pay ranges for a specific facility when there are no other facilities of another OPDIV within the geographic area	ASMB	OPDIV heads	
14. Establish Geographic Location Pay for a specific category/categories of physicians when there are no other facilities of another OPDIV located within the same geographic area	ASMB	OPDIV heads	
15. Approve requests for waiver of repayment of the prorata amount of PSP for failure to complete service agreements	ASMB	OPDIV heads	

PHYSICIANS SPECIAL PAY FACTORS AND AMOUNTS

1. Full-time Service

Medical officers: \$9,000	Dentists: \$3,500
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2. Length of Service

Medical Officers			Dentists		
<u>At least</u>	<u>But less than</u>	<u>Dollar Amount</u>	<u>At least</u>	<u>But less than</u>	<u>Dollar Amount</u>
2 years	3 years	\$ 4,000	2 years	4 years	\$ 1,000
3 years	4 years	5,000	4 years	8 years	2,000
4 years	5 years	6,000	8 years	12 years	3,000
5 years	6 years	8,000	12 years	15 years	3,500
6 years	7 years	9,000	15+years		4,000
7 years	8 years	10,000			
8 years	9 years	12,000			
9 years	10 years	13,000			
10 years	11 years	14,000			
11 years	12 years	15,000			
12 years	13 years	16,000			
13 years	14 years	17,000			
14 years	15 years	18,000			
15+ years		18,000			

3. Scarce Medical Specialty (Nationwide)

MEDICAL OFFICERS	DENTISTS
STATUTORY LIMITATION - \$40,000	STATUTORY LIMITATION - \$20,000
<u>0 - \$40,000 Range:</u> Anesthesiology Cardiac Surgery (Open Heart) Gynecology (including Obstetrics) Neurosurgery Ophthalmology Orthopedic Surgery Plastic Surgery Radiology Thoracic Surgery Vascular Surgery	
<u>0 - \$30,000 Range:</u> Cardiology General Surgery Nuclear Medicine Otolaryngology Urology	
<u>0 - \$20,000 Range:</u> Gastroenterology Psychiatry Pathology	<u>0 - \$20,000 Range:</u> Oral Maxillofacial Surgery
<u>0 - 15,000 Range:</u> Primary Care ¹ Physical Medicine & Rehabilitation	

¹For purposes of eligibility for this component, primary care represents the basic level of patient care. It consists of the delivery of acute and chronic care for medical, psychiatric and social conditions, delivery of preventive health interventions, patient and caregiver education, referral for specialty care when indicated, and the overall management and coordination of care for an individual. Primary Care also generally includes management of medications for an individual.

4. Executive Responsibility²

	Medical Officers	Dentists
Service Chief	\$4,500 - \$15,000	\$1,000 - \$5,000
Chief of Staff	\$14,500 - \$25,000	\$1,000 - \$8,000

5. Board Certification

	Medical Officers	Dentists
First Specialty	\$2,000	\$2,000
Second Specialty	500	500

6. Geographic Location³

Medical Officers	Dentists
0 - \$17,000	0 - \$5,000

7. Exceptional Qualifications⁴

Medical Officers	Dentists
0 - \$15,000	0 - \$5,000

²Dollar amounts for Scarce Medical Specialty and Executive Responsibility must be prorated based on the amount of time spent in each capacity. Total may not exceed 100% of full-time employment.

³Established as a flat rate within the ranges shown.

⁴Established as a flat rate within the ranges shown.