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FEDERAL PHYSICIAN

New VA Physician and Dentist Pay Ranges Announced

On September 16, the Department of Veterans Affairs (VA) announced new pay ranges for physicians and dentists that increase annual salaries by as much as $35,000 a year. The new annual pay ranges are effective November 30, 2014. Agencies that have adopted a modified VA pay system, the Departments of Defense and Health and Human Services, have used the VA pay ranges for physicians. The Federal Physicians Association has written to DoD and HHS to determine how the new rates will affect physician pay in their agency.

Physicians employed by the Bureau of Prisons, the Department of State and other agencies are not covered by a modified VA pay system.

The VA pay system consists of seven pay tables with different levels of salary ranges. The VA physician and dentist pay policy is published on the Federal Physicians Association website, www.fedphy.org, on the library page.

VA identified and utilized salary survey data sources which most closely represent VA comparability in the areas of practice setting, employment environment, and hospital/health care system. The Association of American Medical Colleges (AAMC), Hospital and Healthcare Compensation Service (HHCS), Sullivan, Cotter, and Associates (S&C), Medical Group Management Association (MGMA), Physician Executive Management Center (PEMC), and the Survey of Dental Practice published by the American Dental Association (ADA) were collectively utilized as benchmarks from which to prescribe annual pay ranges for physicians and dentists across the scope of assignments/specialties within VA. While aggregating the data, a preponderance of weight was given to those surveys which most directly resembled the environment of VA.

Veterans Health Administration (VHA) physicians and dentists pay consists of base pay, market pay, and performance pay. While the base pay component is set by statute, market pay is intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician or dentist at a facility. Further, performance pay is intended to recognize the achievement of specific goals and performance objectives prescribed annually.

A table comparing the current rates to the recommended rates is published on page 3.

Department of Health and Human Services policy on market pay and the VA pay tables provides guidance on how pay changes are made. The HHS policy, Instruction 590-1 states:

"When the VA increases the nationwide minimum and/or maximum amounts of annual pay under this paragraph, physicians and dentists

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Congress Passes Bill to Fund Government Until December 11

On September 18, 2014, the Senate passed legislation approving a $1.01 trillion budget which funds all agencies at FY 2014 budget levels through Dec. 11. The bill is silent on the 1 percent pay increase for January 2015, which leaves the door open for the pay increase.

New Maintenance of Certification Requirements Could Affect Physician Pay

Maintenance of Certification (MOC) has become a hot-button issue for many practicing physicians who choose to maintain board certification. The American Board of Medical Specialties (ABMS) has announced new standards and guidelines for Maintenance of Certification programs for its 24 member boards. Although these standards are interpretable and implemented independently by each member board there will be a commonality; a continuous process focusing on concepts of patient centered care, patient safety and performance improvement. Many boards prior to this change had a defined certification period (7 or 10 year cycle), completion of designated medical education learning modules and/or learning activities and finally a

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formalized secure examination. During the cycle there were no continuity requirements other than completing an activity by a specific time. The learning modules were usually self-paced, could be from a member organization or recognized group and usually available electronically. Once this was accomplished physicians were then allowed to take the secure examination.

Maintaining certification for many member boards (of the ABMS) will be a continuous process. An example is the American Board of Internal Medicine (ABIM), one of the largest member boards of the ABMS. The ABIM has instituted requirements mandating a continuous participation in activities to assess medical knowledge and practice. Practically the Internist desiring to keep the designation by the ABIM "board certified" and "meeting MOC requirements" will need to complete designated medical education modules, patient feedback surveys and questionnaires and approved performance improvement activities. All of these requirements have to be completed on a time-line established by the ABIM. If these requirements are not met then the Internist will be listed as "board certified" but "not meeting MOC requirements". These new requirements will have far-reaching consequences for the practicing federal physician.

One issue will be the added cost and time spent participating in ongoing approved MOC activities by the respective board. With the reality of a shrinking federal budget, a larger portion of non-reimbursed (out of pocket cost) will be shouldered by the practitioner. This is especially problematic as many federal physician positions require board certification. The designation "not meeting MOC requirements" could be interpreted by employing agencies as not meeting requirements for board certification. This is a new qualification and there is no benchmark to anticipate what agencies will do with this added qualification, if anything. In addition, the practice improvement/patient survey requirements may prove especially challenging in the federal sector because of heightened awareness of HIPPA rules, PHI (Personal Health Information) and PII (Personally Identifiable Information). Alternatives are available for practitioners not engaged in routine clinical practice (Researcher, Administrative) but the alternatives can be more challenging to accomplish and many times more costly.

In summary, federal physicians who intend to maintain board certification must be prepared to spend more time and money maintaining this certification. Federal physicians should review their board's current guidelines for maintaining certification. Federal physicians who choose to not participate in Maintenance of Certification activities, ("board certified" but "Not meeting MOC requirements") must understand how agencies could potentially use this added qualification to determine whether a physician is meeting requirements for the position and/or the additional compensation for board certification.

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are not automatically entitled to a corresponding increase in their individual annual pay rates. Only physicians and dentists whose existing rate of annual pay falls below the newly prescribed nationwide minimum for their designated pay range will automatically receive an increase in market pay to make their annual pay rate equivalent to the new nationwide minimum. Compensation Panels review the market pay rates for individual physicians and dentists on a periodic basis."

The policy also states:

"The determination of the amount of market pay of a particular physician or dentist shall take into consideration:

a. The level of experience of the physician or dentist in the specialty or assignment;
b. The need for the specialty or assignment of the physician or dentist at the facility;
c. The appropriate health care labor market for the specialty or assignment of the physician or dentist;
d. The board certifications, if any, of the physician or dentist;
e. The accomplishments of the physician or dentist in the specialty or assignment; and
f. Consideration of unique circumstances, qualifications or credentials, if any, and the comparison of these circumstances to the equivalent compensation level of non-HHS physicians or dentists in the local health care labor market."

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Send address changes to FPA at the address or website listed above.

CURRENT		RECOMMENDATION	
Pay Table 1	**Specialty/Assinment**	**Pay Table 1**	**Specialty/Assignment**
Tier 1: $98,967 -195,000	Allergy and Immunology Endocrinology	**Tier 1:** $98,967 - 215,000	Allergy and Immunology Compensation and Pension (New)
Tier 2: $110,000 - 210,000	Endodontics General Practice - Dentistry	**Tier 2:** $110,000 - 230,000	Endocrinology Endodontics
Tier 3: $120,000 - 235,000	Geriatrics Hospitalist	**Tier 3:** $120,000 - 255,000	General Practice - Dentistry Geriatrics
Tier 4: $130,000 - 245,000	Infectious Diseases Internal Medicine / Primary Care / Family Practice Neurology Periodontics Preventive Medicine Prosthodontics Psychiatry Rheumatology All other specialties or assignments not requiring a specific specialty training or certification		Infectious Diseases Internal Medicine / Primary Care / Family Practice Neurology Periodontics Preventive Medicine Prosthodontics Rheumatology All other specialties or assignments not requiring a specific specialty training or certification
Pay Table 2	**Specialty/Assignment**	**Pay Table 2**	**Specialty/Assignment**
Tier 1: $98,967 - 220,000	Critical Care (board certified) Emergency Medicine	**Tier 1:** $98,967 - 240,000	Critical Care Emergency Medicine
Tier 2: $115,000 - 230,000	Gynecology Hematology - Oncology	**Tier 2:** $115,000 - 250,000	Gynecology Hematology - Oncology
Tier 3: $130,000 - 240,000	Nephrology Pathology	**Tier 3:** $130,000 - 260,000	Hospitalist (from Table 1) Nephrology Pathology
Tier 4: $140,000 - 250,000	PM&R/SCI Pulmonary		PM&R/SCI Psychiatry (from Table 1) Pulmonary
Pay Table 3	**Specialty/Assignment**	**Pay Table 3**	**Specialty/Assignment**
Tier 1: $98,967 - 265,000	Cardiology (Non-invasive) Dermatology	**Tier 1:** $98,967 - 300,000	Cardiology (Non-invasive) Dermatology
Tier 2: $120,000 - 275,000	Gastroenterology Nuclear Medicine	**Tier 2:** $120,000 - 310,000	Gastroenterology Nuclear Medicine
Tier 3: $135,000 - 285,000	Ophthalmology Oral Surgery	**Tier 3:** $135,000 - 320 000	Ophthalmology Oral Surgery
Tier 4: $145,000 - 295,000	Otolaryngology		Otolaryngology
Pay Table 4	**Specialty/Assignment**	**Pay Table 4**	**Specialty/Assignment**
Tier 1: $98,967 - 295,000	Anesthesiology General Surgery	**Tier 1:** $98,967 - 325,000	Anesthesiology Cardiology
Tier 2: $125,000 - 305,000	Plastic Surgery Radiology (Non-invasive)	**Tier 2:** $125,000 - 340,000	(Invasive/Non-interventional) General Surgery
Tier 3: $140,000 - 325,000	Urology Vascular Surgery	**Tier 3:** $140,000 - 355,000	Plastic Surgery Radiology (Non-invasive)
Tier 4: $150,000 - 335,000			Urology Vascular Surgery

CURRENT		RECOMMENDATION	
Pay Table 5	**SpecialtyAssignment**	**Pay Table 5**	**Specialty/Assignment**
Tier 1: $150,000 - 275,000 **Tier 2:** $145,000 - 255,000 **Tier 3:** $140,000 - 235,000	VHA Chiefs of Staff - Tier assignments are based on published facility complexity level **Tier 1** - Complexity Levels la & lb **Tier 2** - Complexity Levels lc & 2 **Tier 3** - Complexity Level 3 or facilities with no designated level	**Tier 1:** $150,000 - 300,000 **Tier 2:** $145,000 - 280,000 **Tier 3:** $140,000 - 260,000	VHA Chiefs of Staff-Tier assignments are based on published facility complexity level **Tier 1** - Complexity Levels la & lb **Tier 2** - complexity Levels lc & 2 **Tier 3** - Complexity Level 3 or facilities with no designated level **Tier 3** - (Deputy Chiefs of Staff-Complexity Levels la & lb)
Pay Table 6	**Specialty/Assignment**	**Pay Table 6**	**Specialty/Assignment**
Tier 1: $145,000 - 265,000 **Tier 2:** $145,000 - 245,000 **Tier 3:** $130,000 - 235,000	**Tier 1** - Principal Deputy; other Deputy Under Secretaries for Health; Chief Officers; Network Directors; Medical Center Directors; Network Chief Officers **Tier 2** - VACO Chief Consultants: National Directors; National Program Managers **Tier 3** - All VACO phvsicians or dentists not otherwise defined	**Tier 1:** $145,000 - 265,000 **Tier 2:** $145,000 - 245,000 **Tier 3:** $130,000 - 235,000	**Tier 1** - Principal Deputy: other Deputy Under Secretaries for Health; Chief Officers; Network Directors; Medical Center Directors; Chief Medical Officers **Tier 2** - Executive Directors: other Assistant Under Secretaries for Health; VACO Chief Consultants; National Directors; National Program Managers **Tier 3** - All VACO physicians or dentists not otherwise defined
Pay Table 7	**Specialty/Assignment**	**Pay Table 7**	**Specialty/Assignment**
Tier 1: $98,967 - 375,000 **Tier 2:** $140,000 - 385,000	Cardio-Thoracic Surgery Interventional Cardiology Interventional Radiology Neurosurgery Orthopedic Surgery	**Tier 1:** $98,967 - 375,000 **Tier 2:** $140,000 - 385,000	Cardio-Thoracic Surgery Interventional Cardiology Interventional Radiology Neurosurgery Orthopedic Surgery

DoD Developing New Three Tier Civilian Performance Appraisal System

The National Defense Authorization Act for FY 2010 repealed the authority for the National Security Personnel System and provided the Secretary of Defense with authority to develop agency rules and regulations for a new performance appraisal system. According to the law, the new performance appraisal system is to be "fair, credible and transparent." The law also established a fund to be known as the DoD Civilian Workforce Incentives Fund to incentivize DoD employees based on team or individual performance and to attract or retain employees with particular or superior qualifications or abilities.

According to the periodic DoD progress report, the department is making considerable progress in developing the new personnel authorities. DoD representatives met with unions holding national consultant consultation rights. As a result, a joint labor management personnel authorities implementation working group was established to provide input in support of the implementation of the requirements.

A new three-tiered DoD performance management system will have a uniform appraisal for covered employees and link performance appraisals with mission and organizational goals. The appraisal process will be supported by an integrated automated tool that will facilitate performance planning, communication and the appraisal cycle process.

The Federal Physicians Association will be writing to the director of civilian personnel urging them to include a representative from the Association in developing performance elements for physicians.

VA Reform Legislation Affects VA, DoD and IHS Physicians

When the President signed the Veterans Access, Choice and Accountability Act of 2014 on August 7, 2014, it was the most significant reforms to the U.S. Department of Veterans Affairs (VA) in decades. In the House of Representatives the billed passed with a vote 420-5. It passed the Senate by a vote of 91-3.

The law creates a Veterans Choice Card to allow veterans, who are enrolled in the VA health care system as of August 1, 2014, or newly discharged combat veterans, to seek care from non-VA healthcare providers, including healthcare providers in the Indian Health Service and the Department of Defense, if they are unable to secure an appointment within 30 days.

As reported in previous editions of the *Federal Physician*, according to the Office of Personnel Management, average salaries of VA physicians are $20,000 more than federal physicians in other agencies. The Federal Physicians Association will continue to urge federal agencies to pay physicians, within the same geographic area, with the same experience and in the same specialty, the same annual salary.

Health Care Provider Staffing

The bill provides $5 billion to hire additional primary and specialty healthcare providers and more clinical staff and requires the Inspector General of the VA to determine, annually, the five healthcare occupations for which there are the greatest staffing shortages throughout the VA.

The bill also directs the VA Secretary, under the VA's Health Professionals Education Assistance Program, to give scholarship priority to applicants pursuing education or training towards a career in the healthcare occupation that represents one of the five largest staffing shortages in the VA and extends the assistance program through 2019. Finally it raises from $60,000 to $220,000, the per individual limit on education debt reduction payments made by the VA to health professionals in specialties that are difficult to recruit or retain and who provide the VA would direct patient care services or services incident thereto. It also raises the per year limit on such payments from $12,000 to $24,000.

The law requires non-VA health care providers offering such care and services to veterans to maintain at least the same or similar credentials or licenses that are required of VA healthcare providers; and submit at least annually verification of those licenses and credentials.

The bill includes a provision that directs the Secretary to enter into one or more contracts with private sector entities for an independent assessment of the health care furnished in VA medical facilities. The assessment is required to address the organization workflow processes and tools used by the VA to support clinical staffing access to care, effective length of stay, management and care transitions, positive patient experience, accurate documentation, and subsequent inpatient services. It also requires the assessment to include the staffing level and productivity of each medical facility. The assessment must be accessible to the public on an internet website of the VA.

The bill increases the public's knowledge of VA physicians; it includes a provision that requires the VA website to include a link to the VA's healthcare providers database which provides the public with the location of each VA physician's residency training and identifies whether the physician is currently in residency. It also requires each veteran who is to undergo a surgical procedure by or through the VA to be provided information on the credentials of the surgeon who will perform the procedure.

Employee Performance Provisions

The legislation requires the Secretary to ensure that scheduling and wait time metrics or goals are not used as factors in determining the performance of (1) directors, associate directors, assistant directors, deputy directors, Chiefs of Staff and clinical leads of VA medical centers and (2) directors, assistant directors and quality management officers of the Veterans Integrated Service Networks (VISN). In addition, the bill requires the VA Secretary to modify the performance plans of the directors of the VA medical centers and the VISNs and to ensure that such plans are based on the quality of care received by veterans at the health care facilities under their jurisdictions, and to the degree practicable to assess the performance of other VA leadership positions.

The law also requires the Secretary to establish performance metrics for assessing the performance of VA and IHS physicians under a memorandum of understanding to increase access to care and the quality and coordination of healthcare services. It authorizes the Secretary to remove any individual from the VA Senior Executive Service if the Secretary determines that the individual's performance or misconduct warrants such removal, and the Secretary may remove such individual from the civil service or transfer the individual to a General Schedule position at any appropriate grade for which the individual is qualified. The Secretary is required to notify Congress with written notice of each such removal or transfer and the reason for making it within 30 days after the removal or transfer. It gives the individual seven days to appeal such a removal or transfer to the Merit Systems Protection Board. Currently, most employee's appeals must be filed within 30 calendar days of the effective date of the action.

The bill limits the aggregate amount of awards and bonuses payable to VA employees each fiscal year from FY 2015 to FY 2024.

FY 2013 Physicians Comparability Allowance (PCA) Report Released

During FY 2013, 15 agencies reported providing $17.2 million in physicians' comparability allowance payments to 760 Federal civilian physicians.

In her letter transmitting the report, OPM Director Archuleta said: "Federal agencies must compete with the academic community and private industry for physicians with clinical, research, and other skills needed in a variety of agency programs. Physicians with the needed abilities are often paid highly outside the Government and physicians' comparability allowances help agencies compete when severe recruitment and retention problems arise."

The PCA statute authorizes agencies documenting severe recruitment and retention problems to pay an allowance of up to $14,000 per year to a physician with 24 months or less of service as a Government physician and up to $30,000 per year to a physician with more than 24 months of service as a Government physician.

Physicians Receiving PCA

In fiscal year 2013, of the 18,541 full-time civilian physicians employed by the Federal Government[1], 760 physicians received PCA payments. These physicians were generally covered by the General Schedule (GS) or Senior Executive Service (SES) systems. Most of the Federal civilian physicians who did not receive PCAs were covered by the Department of Veterans Affairs physician pay system (authorized under title 38, U.S. Code).

Summary of PCA Use by Agency

The following table describes FY 2013 agency by agency use of the PCA. (DoD, HHS and VA have increased use of other pay authorities (e.g., physician pay provisions under 38 U.S.C. chapter 74) instead of PCAs to help recruit and retain physicians.)

Agency	No of PCA Physicians	Amount of PCA	Average Salary[2]
Department of Agriculture	1	$30,000	$126,251
Armed Forces Retirement Home	2	$22,500	$151,885
Department of Defense[3]	10	$20,621	$151,584
Environmental Protection Agency	5	$24,546	$131,690
Department of Health and Human Services[4]	308	$22,285	$149,872
Department of Homeland Security	3	$30,000	$141,759
Department of Justice	283	$21,970	$142,700
Department of Labor	6	$25,571	$148,510
National Aeronautics and Space Administration	23	$19,468	$153,836
Peace Corps	4	$15,500	$150,000
Social Security Administration	5	$23,400	$155,500
Department of State	94	$26,000	$156,000
U.S. Agency for International Development	7	$22,286	$135,069
Department of Veterans Affairs	8	$30,000	$166,403

1 Source: U.S. Office of Personnel Management EHRI-SDM, December 2013 (excludes physicians in the uniformed services and certain agencies or pay systems not reported to EHRI-SDM.)

2 Not including the PCA

3 In FY 2012, DoD implemented a title 38 VA hybrid system known as the Physicians and Dentists Pay Plan (PDPP). Under PDPP, physicians and dentists receive a combination of base and market pay authorized under 38 U.S.C chapter 74, based upon their specialty and level of work and are ineligible for PCA, locality pay, and most premium pays. Because of PDPP, PCA use has been reduced to a minimal level at DOD.

4 Many of HHS's physician positions are research positions that require specialized skills. These positions command high salaries in an extremely competitive hiring environment and ongoing recruitment and retention difficulties. For example, one component reported having to pursue other avenues for physicians such as short term Intergovernmental Personnel Act assignments with universities which often result in higher costs. Another component reported using the title 38 physician pay authority more than the PCA authority because PCA does not provide the pay flexibility needed to recruit and retain physicians. Most of HHS's physicians are paid by special pay authorities under title 42 or 38, United States Code, making them ineligible for PCA..

Speaking Publicly, Take Two

by Debra Roth, reprinted with permission from the *Federal Times*, July 28, 2014

A few months ago, I wrote on the topic of how most federal employees who are disciplined for publicly speaking out are found not to have a First Amendment protection on their speech. I also noted that a case was pending before the U.S. Supreme Court that might be a game changer. I'm back to report on the result.

First, a refresher on the state of the law as it stood before the Supreme Court ruled last month.

Thirty years ago, the Supreme Court recognized that public employees, like all citizens, enjoy a constitutionally protected interest in freedom of speech. However, according to the Court, public employee free speech rights must be balanced against the need of government agencies to exercise "wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment."

In sum, speech by a federal employee (in a blog, on your Twitter account, on your Facebook page, in an op-ed), is protected by the First Amendment, and thus cannot be the subject of discipline, if you were speaking as a private citizen (not in your official capacity) and on a matter of public concern. When you speak out with the indicia of your official capacity on a matter of public concern, your speech can be regulated by your federal employer, including discipline.

The rationale is found in the Supreme Court case, Garcetti v. Ceballos, 547 U.S. 410 (2006).

Lane v. Franks, the case just decided by the Supreme Court, was thought to be about whether some official capacity speech is protected. A Central Alabama Community College employee who became the director of Community Intensive Training for Youth, a program for at-risk youth, discovered that an Alabama state representative was on the program's payroll, despite never having provided any work or services. When the employee notified the CACC president about his concerns, the president and CACC's attorney warned him that ending the state representative's "employment" would not be wise for either CACC or for the employee.

The employee ignored this warning and terminated the Alabama state representative when she refused to report to work. The employee, while still employed, was later subpoenaed for his testimony in two federal criminal trials for mail fraud and fraud involving a program receiving public funds. The employee testified that the state representative had not reported to work, had not submitted time sheets, and had refused to report to work. Subsequently, the CACC president fired the employee who terminated the state representative.

The employee then filed suit in federal district court, claiming that his firing was retaliation for his testimony, which was protected by the First Amendment. The court of appeals ruled for the employer, finding that an employee does not enjoy First Amendment protection when the speech was made pursuant to his official duties.

Surprisingly, the Supreme Court held that truthful testimony under oath by the public employee was made outside the scope of his ordinary job duties and thus was speech as a private citizen for First Amendment purposes. The Court cited the Garcetti case ("Exposing governmental inefficiency and misconduct is a matter of considerable significance") to support its holding that the testimony was a matter of "significant" public concern. Finally, the court considered "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public."

In a 1983 decision, the Supreme Court recognized that government employers often have legitimate interests in promoting efficiency and integrity in the discharge of employees' official duties and maintaining discipline in the public service. However, the court stated that here the public employer had not, and could not, assert any government interest that tips the balance in its favor. The employee's testimony was not false or erroneous, and he had not disclosed any sensitive, confidential or privileged information in his testimony. The court concluded that the employee's speech was entitled to First Amendment protection, marking it a good day for public employees.

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Review of Military Healthcare Facilities Finds no Major Weaknesses in Patient Care

A three month review of the military healthcare facilities, which includes 50 hospitals and 600 clinics, found that military healthcare was equal to private care, but Secretary Hagel said the review found areas that need improvement. In an October 1, 2014 memo, Secretary Hagel directed implementation of several essential measures involving access to care, quality and safety of care and transparency and patient engagement. The Secretary's October 1, 2014 memo is available on the website: www.fedphy.org. More information on the review will be published in the next issue of the *Federal Physician*.

Federal Physicians and Personal Actions

Most federal agencies are authorized to suspend, demote, furlough, or remove federal employees for "such cause as will promote the efficiency of the service." These are called adverse actions and are based upon misconduct, unacceptable performance, or a combination of both. Most federal agencies are also authorized to demote or remove employees for "unacceptable performance." Such actions are commonly referred to as performance-based actions.

Federal physicians have a variety of appeal and grievance rights available to challenge adverse actions and performance based actions. This article is the first in a series on federal employment issues, merit system principals, the appeals process, and the agencies involved in employment issues.

Several agencies adjudicate appeals and some (or most) federal physicians are not familiar with their rights, the appeals process or the agencies involved. Depending on the issues involved, federal physicians may pursue employment issues within their agency, appeal to the Merit Systems Protection Board (MSPB), file a complaint with the Equal Employment Opportunity Commission (EEOC) or appeal to the Office of Special Counsel (OSC).

Employees generally have the right (1) to appeal a suspension, demotion, or removal to the MSPB or (2) to grieve the action through the agency's negotiated grievance procedure. Employees can choose between these two methods of appeal, but cannot pursue both avenues. Allegations of discrimination, reprisal for whistleblowing, and other prohibited personnel practices can be raised as part of an employee's appeal or grievance. Such allegations can also be filed directly with the agency's Equal Employment Office or the OSC.

Employees working during their probationary/trial periods generally are not covered under the federal regulations (the Code of Federal Regulations (CFR)) governing performance based reductions in grade and removal actions or adverse actions (see CFR parts 432 or 752). Except for certain circumstances, if an action is warranted against a probationer, he or she can appeal the termination to the Merit Systems Protection Board only if the action is based on marital status or partisan political affiliation. This is due, in part, to the very nature of the probationary/trial period which provides supervisors the opportunity to determine whether a new employee will be an asset rather than a liability to the organization.

Generally, all federal employees must receive full procedural and appeal rights. Employees working during their probationary/trial periods generally are not covered. In certain circumstances, however, individuals working in probationary/trial periods who have prior current continuous service may qualify to receive full procedural and appeal rights.

Affirmative Defenses

Employees may introduce evidence in response to and in defense against an agency action by providing evidence such as a new fact or set of facts to defeat actions taken against them, even if the facts supporting the actions are true. This is called an affirmative defense which includes claims that the agency action was contrary to the law or that a harmful procedural error occurred.

If the action is otherwise appealable to the MSPB, individuals can raise as an affirmative defense discrimination based on partisan political reasons, marital status, race, color, religion, sex, national origin, age (must be at least 40 years old) or handicapping condition. Individuals may also allege as an affirmative defense a prohibited personnel practice.

Disability discrimination and whistleblower reprisal are some of the affirmative defenses that can be raised.

Agencies Involved in Federal Employment Issues

The MSPB purpose is to ensure that federal employees are protected against abuses by agency management, that executive branch agencies make employment decision in accordance with merit system principles and that federal merit systems are kept free of prohibited personal practices.

The EEOC hears and decides discrimination complaints except when allegations of discrimination are raised in appeals from agency personnel actions brought before the MSPB.

The Federal Labor Relations Authority (FLRA) is responsible for negotiating and resolving disputes, unfair labor practice complaints, and exceptions to arbitration awards.

The OSC investigates allegations of activities prohibited by civil service laws, rules or regulations.

Next: What are Merit System Principals and Prohibited Personnel Practices

CDC Physician Named Federal Employee of the Year

Rana A. Hajjeh, MD, Director, Division of Bacterial Diseases, Centers for Disease Control and Prevention, Atlanta, Georgia was named federal employee of the year at the annual Service to America Medals ceremony on September 22, 2014 for her work. The award, presented to Dr. Hajjeh and her team, by the Partnership for Public Service, is one of the Samuel J. Heyman Service to America Medals.

Dr. Hajjeh and her team received the award for leading a global vaccination campaign, the Hib Initiative, which will save the lives of millions of children around the world. Dr. Hajjeh, is a longtime medical epidemiologist at the Centers for Disease Control and Prevention, who worked nearly nine years to stop the deaths of almost 400,000 children a year who were dying of bacterial meningitis and pneumonia. She led a global campaign that convinced 60 countries to adopt the vaccine's use. World health experts estimate it will save the lives of 7 million children by 2020.

In Brief

Health Insurance Premiums will Increase 3.2 Percent in 2015

OPM Director Archuleta announced on October 7 that the overall average premium increase for employee health benefits provided through the Federal Employees Health Benefits (FEHB) Program will be 3.2 percent for 2015. The health insurance increase means employees with self-only coverage will pay an average $2.93 more in each bi-weekly pay period. Employees with family coverage can expect an average increase of $6.89 per pay period. The actual premium increases depend on which plans employees choose. Detailed breakdowns of the FEHB Program premium rates are available at OPM.gov.

Federal Benefits Open Season Starts November 10, 2014

This year's Federal Benefits Open Season runs from Monday, November 10, 2014 through Monday, December 8, 2014. The 2014 Open Season information will be posted by OPM by the first week in November. The open enrollment period ("Open Season") is when federal employees, retirees and annuitants can enroll, change or cancel their participation in a federal health plan.

FEHBP Self Plus One to Start in 2016

The December 2013 budget agreement authorized the Office of Personnel Management to set up a "Self Plus One" option under the Federal Employees Health Benefits Program. The current program requires a couple with no children to purchase a health benefits plan at the same rate as an entire family; the self-plus-one option" would eliminate this requirement.

On March 24, OPM issued guidance to announce that it will be implementing a new enrollment type, Self Plus One, under the FEHBP. The Self Plus One enrollment will cover a federal employee or retired federal employee and one eligible family member. The annual Open Season for enrolling in the FEHBP or changing plans that starts on November 9, 2015 will include the Self Plus One enrollment type in the available choices.

To comply with the Affordable Care Act, FEHBP plans must set out-of-pocket maximums of $6,000 for self only plans and $13,200 for self and family plans. The maximum applies to all in-network deductibles, co-payments and co-insurance health benefits.

Health Benefits for Temporary Federal Employees

OPM has proposed expanding the eligibility for enrollment under the Federal Employees Health Benefits Program (FEHBP) to certain temporary and intermittent employees who are identified as full-time employees. When the regulation takes effect in January 2015, employees who are scheduled to work at least 130 hours in a calendar month will be eligible for FEHBP. Now temporary employees who work for fewer than six months each year are not eligible to enroll in the FEHBP. In addition, beginning in January 2015, temporary employees with more than one year of service enrolled in the FEHBP will, for the first time, qualify for a government contribution.

New Enrollment Opportunities for Federal Dental and Vision Insurance

OPM has proposed new rules to provide new enrollment opportunities for the Federal Employees Dental and Vision Insurance Program (FEDVIP). Federal employees can make enrollment changes when they get married or return to work after certain periods of leave without pay. FEDVIP enrollees will now be able to enroll or change plans or options when they experience these life events. Previously, enrollees had to wait until the annual Open Season event to make these changes.

OPM Proposes Changing Career Tenure Rule

The Office of Personnel Management (OPM) has proposed changing its current regulations on creditable service for career tenure for federal employees. The proposed regulation removes the requirement for creditable service to be substantially continuous. According to OPM, the change will assist individuals who leave federal service before meeting the requirement and subsequently return to a qualifying appointment.

Current OPM regulations require federal employees to serve a three-year period of substantially continuous creditable service in order to attain career tenure. Federal employees with career tenure have permanent reinstatement eligibility, making it easier for them to return to federal employment after a break in service. Career tenure also helps determine federal employees' retention standing in the event of a reduction-in-force.

Current regulations generally require a career-conditional employee who separates from federal service to restart the three-year period if he or she experiences a break in service lasting more than 30 days. OPM is proposing to change the requirement from 3 years of substantially continuous service to at least 3 years of total creditable service (whether or not continuous).

Gender Pay Gap Shrinking in Federal Government

According to an April 2014 OPM report, since 1992, the gender pay gap in the federal government has fallen from 30 percent to 13 percent for all white collar jobs. However, only 33 percent of Senior Executive Service positions are filled by females.

FY 2015 Per Diem Rates Announced

On August 15, the General Services Administration announced that the per diem rates for FY 2015 will be unchanged from the FY 2014 rates. The standard lodging per diem will be $83 and meals and incidental expenses will range from $46 to $71. The list of the 400 non-standard per diem rates is at http://www.gsa.gov/portal/content/104877.

Combined Federal Campaign (CFC) Includes 24,000 Charities in 2014

For the first time, donors have the option of giving to any of the more than 24,000 charities participating in the CFC, regardless of where they are located. Employees can use the new on-line search capabilities tool which contains all National, International, and Local Charities in the CFC available at: http://www.cfctoday.org/_root/index.php?content_id=5204. The 2014 campaign ends December 15, 2014.

Why Federal Physicians Need Professional Liability Insurance

In the federal government, one of the most demanding jobs is that of a federal physician. The recent uproar over wait times and document falsification at the Phoenix VA location shed light on the enormous pressures that many federal physicians face in terms of numbers of patients and workload. For today's federal physicians, navigating through your career without any complaints, allegations, or malpractice claims is becoming increasingly difficult. This is the main reason that federal physicians in large numbers are turning towards professional liability insurance (PLI). A good PLI policy provides the insured with liability protection and legal defense for job-related civil, administrative and criminal adverse actions.

Under the Federal Tort Claims Act (FTCA), federal physicians are essentially given malpractice protection for actions within their scope of employment - this means that federal medical personnel have financial protection from most common malpractice lawsuits. The FTCA does not, however, provide immunity for personal capacity lawsuits or constitutional torts, giving federal physicians vulnerability to certain types of civil lawsuits, called *Bivens* actions, which can arise when there are allegations of constitutional rights violations. A PLI policy covers these types of lawsuits, and provides for both legal defense costs and indemnification up to $1 million or $2 million.

For many federal physicians, the primary benefit of having a PLI policy is the array of administrative protections included. The PLI policy offered by Federal Employee Defense Services (FEDS) offers up to $200,000 in legal defense for adverse administrative actions, including disciplinary actions and investigations into alleged ethics violations, professional misconduct and negligent performance of duties made against physicians working for the NIH, DoD, VA, HHS, BOP, Department of Labor, FDA and other federal agencies. **In fact, the FEDS policy would even protect you in a state medical board investigation and proceedings arising out of the performance of your federal job duties.**

A FEDS policy also provides for up to $100,000 in legal representation for any job-related criminal charge the policyholder may face. FEDS members are also entitled to two one-half hour consultations with an attorney to discuss pre-complaint or related matters. Many federal physicians are also managers or supervisors, which means that they qualify for the agency PLI reimbursement: this could mean savings of up to $150 on the $290 or $390 annual cost of a FEDS policy. FEDS continually works with the Federal Physicians Association (FPA) and other federal employee communities, professional organizations and associations to ensure that we provide the protection that federal employees need to do their jobs effectively. To learn more about the FEDS program, call 866.955.FEDS or visit www.fedsprotection.com today.

Federal Physicians Association Board of Directors

FPA Agency Contacts

In order to keep members of the Federal Physicians Association informed of actions or issues affecting federal physicians, and to make sure federal physicians are made aware of FPA's activities, FPA is developing contacts in all agencies employing federal physicians. The goal is to have an FPA contact in each NIH institute, at each Indian Health Service hospital, at each DoD installation, etc.

FPA members interested in serving as agency contacts should contact the office at 1-877-333-7497, or staff@fedphy.org.

Federal Physicians Association Membership Application

Name: _____ Office Phone: _____
last *first*

Address: _____ Email: _____
street

Address: _____
city *state* *zip*

Agency: _____ Medical Specialty: _____

Grade: _____ Yrs Service: _____ Type Pay System: _____ Total Pay: _____
**PCA, T38, PDPP*

☐ Annual: $100/year $185/2 years ☐ Check enclosed payable to FPA

☐ Amex ☐ MasterCard ☐ Visa Account Number: _____-_____-_____-_____ Exp Date: _____ / _____

Mail to: FPA, 12427 Hedges Run Dr, Suite 104, Lake Ridge, VA 22192
May we print your name as a new member in the newsletter? ☐ yes ☐ no

50% of dues is attributable to nondeductible lobbying activity and is therefore not deductible under Internal Revenue Code Section 162 as an ordinary and necessary business expense.

Sep/Oct 2014

Federal Physician

12427 Hedges Run Drive, Suite 104
Lake Ridge, VA 22192

OPM Issues Final Rules on Phased Retirement Program

Two years after the President signed the law on the phased retirement program, on August 7, 2014 the Office of Personnel Management (OPM) issued the regulations necessary to implement the program. The earliest federal employees can submit applications for phased retirement is November 6, 2014.

The OPM rules allow agencies to implement the program to meet their specific needs, to identify the types of positions eligible to participate and to establish guidelines for approving and denying requests for the program. Whether agencies employing federal physicians will implement the program is unknown. FPA will be monitoring agency actions on Phased Retirement and update the status, by agency, on the website.

To be eligible for the phased retirement program, employees in the Civil Service Retirement System (CSRS) must be age 55 with 30 years of service. Employees in the Federal Employees Retirement System (FERS) must meet the minimum retirement age and have 30 years of service. Both CSRS and FERS employees that are age 60 with 20 years of service are eligible for phased retirement.

Employees participating in phased retirement will be paid for the part-time service they continue to provide the government and will receive additional credit for that service toward their full retirement. These employees will also begin receiving annuity payments, consistent with the retirement benefits they were entitled to prior to entering phased retirement status, pro-rated for the portion of the workweek they spend in retirement.

When the Phased Retiree fully retires, the revised annuity calculation will provide pro-rated service credit for additional time worked during phased retirement.

At entry into Phased Retirement, the employee's annuity will be computed as if fully retired and then divided by two. That annuity would be paid while the individual worked a half time schedule receiving half pay. Phased retirees continue their eligibility to participate in the TSP. The FEHBP employer contribution will be the same as for full-time employees. FEGLI coverage amounts will be based on the full time salary for the position.