



DEPARTMENT OF VETERANS AFFAIRS
UNDER SECRETARY FOR HEALTH
WASHINGTON DC 20420

MAY 08 2009

The Honorable William Reukauf
Acting Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036-4505

Re: OSC File No. DI-08-1766

Dear Mr. Reukauf:

This is in response to your July 1, 2008, letter regarding allegations of mismanagement of fee basis employee appointments at the Department of Veterans Affairs (VA) medical Center in Portland, Oregon. OSC referred this to VA for investigation pursuant to 5 U.S.C. § 1213(c). VA's Office of Inspector General (OIG) conducted the investigation and issued the enclosed report. The report may also be found on the VA OIG Web site at www.va.gov/oig.

The OIG report meets the report requirements of 5 U.S.C. § 1213(d). I have reviewed and accept the findings and recommendations in this report.

Please have a member of your staff contact Thomas McKeever in the Office of General, Professional Staff Group III, if you have any questions or comments. He can be reached at 202-461-7694.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Kussman".

Michael J. Kussman, MD, MS, MACP

Enclosure




THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

June 27, 2007

MEMORANDUM FOR THE UNDER SECRETARY FOR HEALTH

SUBJECT: Delegation of Authority to Review and Sign an Agency Report to the Office of Special Counsel

1. **DELEGATION.** This memorandum delegates to the Under Secretary for Health the authority to review and sign agency reports regarding Veterans Health Administration (VHA) matters referred to the Secretary by the Office of Special Counsel pursuant to 5 U.S.C. § 1213. VHA matters that also may relate to other Administrations or offices must be coordinated with those offices. This delegation includes the authority to take any actions deemed necessary under 5 U.S.C. § 1213(d)(5).
2. **AUTHORITY.** 38 U.S.C. § 512.
3. **RESTRICTIONS.** None. This delegation cancels and supersedes all previous delegations of authority.
4. **REDELEGATION.** The Under Secretary for Health may not redelegate this authority.
5. **EFFECTIVE DATE.** This delegation of authority is effective upon signature and will expire two years after the date delegated.



R. James Nicholson



**Department of Veterans Affairs
Office of Inspector General**

**Review of Allegations of Mismanagement
of Fee-basis Appointments
VA Medical Center
Portland, Oregon**

To Report Suspected Wrongdoing in VA Programs and Operations

**Telephone: 1-800-488-8244 between 8:30AM and 4PM Eastern Time,
Monday through Friday, excluding Federal holidays**

E-Mail: vaoiqhotline@va.gov

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Executive Summary

Introduction

On July 1, 2008, the Secretary for the Department of Veterans Affairs received a request from the Office of Special Counsel (OSC) to investigate an allegation regarding mismanagement of fee-basis appointments at the Portland, Oregon VA Medical Center (VAMC). The Secretary referred the matter to the Office of Inspector General (OIG). The complainant alleged that the fee-basis appointments at the Portland VAMC were being inappropriately approved and managed. The complainant stated that nurses who had retired from the Federal Government were being re-hired on a fee-basis appointment while continuing to receive their retirement benefits. Further, the complainant asserted that fee-basis appointees were being paid on a time-basis rather than per task or service. Moreover, the complainant alleged that the fee-basis appointees were being paid more than the allowed \$15,000 annual limitation.

Title 38 of the United States Code, § 7405(a)(2), allows VA to use fee-basis appointments to hire employees into certain positions listed in 38 U.S.C. § 7401(1),(3), without regard to civil service or classification laws, rules, or regulations. To implement the provisions of § 7405(a)(2), VA issued a policy which is found in VA Handbook 5007, Part II, Appendix F (Compensation of Consultants, Attendings, and Others Employed on a Fee Basis Under 38 U.S.C. § 7405). In addition to establishing annual limitations on the amount to be paid to fee-basis appointees, the policy states that employees appointed on a fee-basis are to be compensated by the task or service and are not to be paid on a time-basis.

Results

We reviewed 142 fee-basis agreements for nurses in effect at the Portland VAMC in Calendar Years (CY) 2007 and 2008. We substantiated allegations that the Portland VAMC was not managing the fee-basis appointments for nurses in accordance with VA policy. The major flaw was that the VAMC was paying the nurses for time worked, not on a task or service basis as required by VA policy for fee-basis appointments.

We found that in CYs 2007 and 2008, the Portland VAMC hired 42 retired nurses as fee-basis appointees who were paid on a time-basis, without reducing their pay by the amount of their annuity. Title 5 of the United States Code, §§ 8344 and 8468 state that if a retired annuitant becomes reemployed in an appointive or elective position, the annuitant's pay shall be reduced by the amount of annuity received during that period of employment. VA Handbook 5007, Part II,

Appendix F states that retired annuitants are not subject to any reduction in fees when hired on a fee-basis; however, this provision was based on compliance with the requirement in the policy that the fee-basis employee was paid on a procedure basis, not a time-basis. Therefore, because under the fee-basis agreements the retired VA nurses were paid for the time worked, they are inappropriately being hired as fee-basis appointees and their pay should have been reduced by the annuity received. To pay the nurses for time worked, the Portland VAMC should have hired them under different authority (e.g., as temporary full-time, part-time, or intermittent employees under 38 U.S.C. § 7405(a)(1)), which would have required a reduction in pay by the appointee's annuity.

Because the VA policy, not Title 38 U.S.C. § 7405(a)(2), imposes restrictions that fee basis payments must be on a procedure, task or service basis, not a time-basis, and states that retired annuitants are not subject to any reduction in fees when hired under fee-basis agreements, we asked VA's Office of General Counsel (OGC) for an opinion on whether VA policy complies with the provisions in Title 5 U.S.C. §§ 8344 and 8468 with respect to reducing a re-employed annuitant's pay by the annuity received. After reviewing the issues, OGC requested an opinion from the Office of Personnel Management (OPM), which found that reemployed annuitants who are paid on a fee-basis may continue to receive their full annuities without a reduction in salary as long as the annuitant's employment is not time-based. Therefore, the VA policy implementing § 7405(a)(2), VA Handbook 5007, Part II, Appendix F, complies with 5 U.S.C. §§ 8344 and 8468 regarding the reduction of pay by the annuity paid when annuitants are re-employed on a fee-basis.

VA policy also imposes a \$15,000 annual limitation on fees paid unless a waiver is obtained by the facility director. We identified eight (8) fee-basis appointees who were paid more than the \$15,000 annual limitation without a waiver from the Facility Director.

Further, the VA policy requires that the hospital institute a procedure which would alert the Human Resources (HR) personnel when a fee-basis appointee is reaching the annual limitation in fees allowed by the fee-basis agreement. Although we were told that this procedure is in place at the Portland VAMC, we found that in CY 2007, four (4) nurses were paid more than the annual amount allowed in the fee-basis agreement.

Recommendations

We recommend that the VISN 20 Director:

1. Take action to ensure that the Portland VAMC HR department complies with the provisions of VA Handbook 5007, Part II, Appendix F (Compensation of Consultants, Attendings, and Others Employed on a Fee Basis Under 38 U.S.C. § 7405) when approving and administering fee-basis agreements.
2. Take action to immediately discontinue any fee-basis agreements currently in effect at the Portland VAMC that pay fee-basis appointees on a time-basis and convert these employees to either a full-time, temporary full-time, part-time, or an intermittent employee, whichever is appropriate.
3. Take action to ensure that the Portland VAMC HR department complies with the provisions of 5 U.S.C. §§ 8344, 8468 (Annuities and Pay on Reemployment) when hiring retired annuitants who are paid on a time-basis.
4. Regarding the annuitants who were re-employed as fee-basis employees and were paid on a time-basis, take action to retroactively reduce their fees earned in CYs 2007 and 2008 by the annuities received, pursuant to 5 U.S.C. §§ 8344(a), 8468(a), and pursue collection of these amounts.
5. Take appropriate action against the individual in HR who approved the fee-basis agreements for CY 2008 and allowed the fee-basis appointees to be paid on a time-basis, which violated VA policy.
6. Take appropriate action against the Portland VAMC Director who approved the fee-basis agreements that allowed fee-basis appointees to be paid on a time-basis, in violation of VA policy.
7. Provide training regarding the provisions of VA Handbook 5007, Part II, Appendix F (Compensation of Consultants, Attendings, and Others Employed on a Fee Basis Under 38 U.S.C. § 7405) relating to the management of fee-basis agreements to personnel at the Portland VAMC who are in a position to request or approve fee-basis agreements.

VISN 20 Acting Director's Comments

The VA Integrated Services Network (VISN) 20 Acting Director concurred with six of the seven recommendations of the report. The Acting Director did not agree with our recommendation to take appropriate action against the Portland VAMC Director who approved the fee-basis agreements for appointees who were paid on a time-basis. The Acting VISN Director found that the Portland VAMC Director relied on the expertise of the HR Department when he approved the fee-basis agreements and should not be held responsible. However, the Acting VISN Director stated that the Portland VAMC Director now understands the importance of the issue of proper management of the fee-basis agreements and has taken corrective steps to ensure the issue is resolved. We believe that actions taken by the VISN to educate the VAMC Director on the importance of proper management of fee basis agreements meets the intent of our recommendation.

The VISN 20 Acting Director concurred with all other recommendations of the report and set forth a plan of action to correct the problems. The VISN 20 Director stated that the Portland VAMC will develop internal procedures for management officials on the proper administration of the fee-basis agreements. Fee-basis agreements will also be monitored to ensure compliance with policy. In addition, any fee-basis agreement that is currently paid on a time-basis will be terminated no later than March 15, 2009. Training regarding the regulatory requirements and management of the fee-basis agreements will be conducted for Human Resources Specialists and any staff who request or approve fee-basis agreements. Training regarding reemployed annuitants and the off-set of their annuities by pay received on reemployment will also be conducted for the HR staff. Any annuities received by reemployed annuitants who were paid as time-based fee-basis employees will be retroactively off-set by the pay received for calendar years 2007 and 2008 and collection of these amounts will be pursued unless a waiver is obtained. Finally, appropriate action will be taken against the individual in HR.

We find that the corrective actions proposed resolve the findings identified in this report.

(original signed by:)
MAUREEN REGAN
Counselor to the Inspector
General

INTRODUCTION

Purpose

The OSC received a complaint alleging that the fee-basis appointments at the Portland VAMC were being inappropriately approved and managed. The complainant stated that retired nurses were being re-hired on a fee-basis appointment while continuing to receive their retirement benefits. Further, the complainant asserted that fee-basis appointees were being paid on a time-basis rather than per task or service. Moreover, the complainant alleged that the fee-basis appointees were being paid more than the allowed \$15,000 annual limitation.

Title 38 of the United States Code, Section 7405(a)(2), allows VA to use fee-basis appointments to hire employees into certain positions listed in 38 U.S.C. § 7401(1),(3), without regard to civil service or classification laws, rules, or regulations. The position of “nurse” is a position that fits into the categories listed in 38 U.S.C. § 7401(1). VA policy implementing the provisions of 38 U.S.C. § 7405(a)(2) is found in VA Handbook 5007, Part II, Appendix F (Compensation of Consultants, Attendings, and Others Employed on a Fee Basis Under 38 U.S.C. § 7405). This policy states that employees appointed on a fee-basis are to be compensated by the task or service (*i.e.*, by piecework) and are not to be paid on a time-basis. Further, the policy states that the total payment to consultants and attendings (excluding nurse anesthetists) and on-station fee-basis appointees (excluding special duty nurses) may not exceed \$15,000 in a calendar year unless a waiver is obtained from the facility director. To ensure that fee-basis appointees do not receive fees in excess of the amount allowed in their fee-basis agreements, the policy also requires each facility hiring fee-basis appointees to institute a monitoring system that alerts HR personnel when the fee-basis appointee is reaching his or her maximum allowable annual fee. The policy also allows that civil service annuitants (retired Federal Government employees) who are reemployed under task or service based fee-basis agreements are not subject to any reduction of fees by the amount of the annuity they receive.

We obtained the fee-basis agreements for the nurses at the Portland VAMC that were in effect for CYs 2007 and 2008. The fee-basis agreements for CY 2007 were approved by the previous Director of the Human Resources Management Services. The fee-basis agreements for CY 2008 were approved by another employee in the HR department.

In 2007, there were 68 fee-basis appointees who were nurses and in 2008, there were 74 fee-basis appointees for nursing services. For CY 2007, 51 out of the 68 fee-basis nurses were paid based on the amount of time worked rather than by task or service. For CY 2008, 52 of 74 fee-basis appointees were paid on a time-basis.

Sixty-eight of the total 103 fee-basis appointees that were paid on a time-basis for CYs 2007 and 2008 were paid a certain fee for a 4-hour shift, an 8-hour shift, or a 12-hour shift. The remaining fee-basis appointees who were paid on a time-basis were paid for a full day or a half day of work, but the amount of hours that constituted a full day or a half day were not indicated in the agreement. Eighty-three of the 103 fee-basis agreements that were paid on a time-basis for CYs 2007 and 2008 show that although the appointees were paid for shifts that were time-based, the agreements referred to the 4, 8, and 12-hour shifts as “procedures,” thereby giving the appearance that the fee-basis appointee was being paid per procedure as opposed to a time-basis. For example, Procedure A would be defined as a 4-hour shift and Procedure B would be defined as an 8-hour shift or Procedure A would be defined as a full-day shift and Procedure B would be defined as a half-day shift.

The time sheets for the first two pay periods of CY 2007 for 20 of the highest paid fee-basis appointees paid on a time-basis verified that these appointees were paid on a time-basis as opposed to per procedure or service performed. For example, 14 of the 20 fee-basis appointees’ time sheets showed that for each day worked, the fee-basis appointee was paid a certain amount and this amount agreed with the amount authorized for an 8- hour or 12-hour shift in the fee-basis agreement. Four of the remaining appointees’ fee-basis agreements show that they were to be paid for a full day or half day but the amount of hours were not indicated in the fee-basis agreements. The time sheets for two of the four appointees show that they were paid the amount that was indicated in the fee-basis agreement for a full day or a half day. The time sheets for the other two fee-basis appointees show that the full day was based on an 8-hour day, as the hours worked were indicated on the time sheet (*e.g.*, 7:00 a.m. – 3:30 p.m.); however, the time sheets shows that these two appointees were paid \$20 less per day than what was authorized in their fee-basis agreements. In addition, another fee-basis appointee’s time sheet shows that the appointee was routinely paid a different amount than what was authorized in the fee-basis agreement. The fee-basis agreement authorized payment of \$380 for a full day and \$190 per half day. The appointee was often paid \$348.75 per day or \$157.50 per half-day. Despite repeated requests, Portland VAMC HR personnel were unable to explain the discrepancies for these three fee-basis appointees. The remaining fee-basis appointee’s time sheet shows no payments for the first two pay periods of CY 2007.

The fee-basis agreements show that 5 of the 68 CY 2007 fee-basis appointees and 9 of the 74 CY 2008 fee-basis appointees were to be paid “per procedure”; however, the agreements did not define the procedure to be performed. Therefore, it is unclear whether these fee-basis appointees were actually paid a fee for performing a specific procedure or task or whether they were paid on a time-basis.

The review also showed that 57 of the 68 CY 2007 fee-basis agreements exceeded the \$15,000 annual limitation set by VA policy. The fees ranged from \$20,000 to \$133,900. Of the 57 agreements, 2 did not include a required waiver from the facility director to allow an annual fee in excess of the \$15,000 annual limitation. For CY 2008, 68 out of 74 fee-basis appointees' agreements exceeded the \$15,000 annual limitation of which 6 agreements did not include a waiver from the facility director. The fees ranged from \$30,000 to \$139,600.

For CYs 2007 and 2008, we obtained data from the VA Personnel and Accounting Integrated Data (PAID) system showing the actual payments for each year. A comparison of actual payments to the annual limitations approved in the fee-basis agreements showed that for CY 2007, four fee-basis appointees received annual payments in excess of the amount approved in their fee-basis agreements. Of the four, only one had received a waiver to earn more than the \$15,000 annual limitation. The waiver approved payments of up to \$50,000 in annual fees, but the appointee was actually paid \$73,800.00 in CY 2007. The three fee-basis appointees whose agreements were capped at the \$15,000 annual limitation received actual payments of \$26,325.18, \$23,660.00, and \$24,266.00 in CY 2007. For CY 2008, payments did not exceed the annual limitations provided in the fee-basis agreements.

In August 2008, the former Acting Chief of HR and the Acting Supervisor of Employee and Labor Relations told us that any fee-basis agreements in effect in Fiscal Year 2008 that allowed for payment of fees on a time-basis would be discontinued as of September 30, 2008. To verify that this action had been taken, we obtained data from the PAID system to determine whether any payments were made to these fee-basis appointees after Pay Period 20 for CY 2008, which is the pay period that included September 30, 2008. Of the 52 CY 2008 fee-basis appointees that were paid on a time-basis, 34 received payments for work performed after Pay Period 20.

In addition, the Acting Supervisor of Employee and Labor Relations stated that the VAMC had a mechanism in place to monitor payments to the fee-basis appointees wherein the HR department would be alerted when the fee-basis appointees' actual payments were approaching the annual limitation identified in the fee-basis agreement. Although the system was in place in 2007, the former Acting Chief of HR stated that the monitoring system was not being used in 2007 due to the high employee turnover in the HR department.

The Portland VAMC HR department also indicated which fee-basis appointees for CYs 2007 and 2008 were retired Federal Government employees. There were 27 fee-basis appointees in CY 2007 and 33 fee-basis appointees in CY 2008 who were retired nurses. Of the 27 fee-basis appointees in CY 2007, 19 were paid on a time-basis. Of the 33 CY 2008 fee-basis appointees, 23 were paid on a time-basis.

Scope and Methodology

To assess the allegations, we reviewed the fee-basis agreements for all nurses at the Portland VAMC that were in effect in CY 2007 and CY 2008. We also reviewed the actual payments made to the fee-basis appointees for CYs 2007 and 2008 from the PAID system and the time sheets for the first 2 pay periods in CY 2007 for 20 of the highest paid fee-basis appointees who were paid on a time-basis. In addition, we interviewed the former Acting Chief of the Portland VAMC HR department and the Acting Supervisor of Employee and Labor Relations at the Portland VAMC.

RESULTS AND CONCLUSIONS

Issue 1: Whether the Portland VAMC compensated its fee-basis employees on a time-basis, which is prohibited by VA Handbook 5007, Part II, Appendix F, Paragraph 3(b).

Findings

We concluded that in CYs 2007 and 2008, the Portland VAMC frequently compensated fee-basis appointees on a time-basis, which is prohibited by VA policy.

VA Handbook 5007, Part II, Appendix F, Paragraph 3(b) states that employees appointed on a fee-basis are to be compensated by the task or service (*i.e.*, by piecework) and are not to be paid on a time-basis. There is no exception to this provision within the VA policy. Our review found that 51 of 68 CY 2007 fee-basis appointees and 52 of the 74 CY 2008 fee-basis appointees were paid based on the amount of hours or time worked, not a specific task or service. Of the 103 time-based agreements for CYs 2007 and 2008, 51 percent were approved by an employee in the Portland VAMC HR department.

Although the Portland VAMC HR department told us that the time-based fee-basis agreements were to be discontinued as of September 30, 2008, this does not negate the fact that the fee-basis agreements in effect for CYs 2007 and 2008 at the Portland VAMC that authorized payment on a time-basis violated the VA policy. In addition, the information obtained from the PAID system for CY 2008 shows that 34 of the 52 fee-basis appointees who were being paid on a time-basis in CY 2008 (or 65 percent) continued to receive payments as fee-basis appointees after September 30, 2008.

Conclusion

The Portland VAMC failed to comply with VA policy when it approved fee-basis agreements for nurses to be paid on a time-basis, which is expressly prohibited by VA Handbook 5007, Part II, Appendix F, Paragraph 3(b).

Issue 2: Whether fees paid to retired VA nurses who entered into time-based fee-basis agreements should have been reduced by the retirement benefits paid.

We concluded that retired annuitants who entered into fee-basis agreements in CYs 2007 or 2008 and were paid on a time-basis instead of per procedure or task should have had their fees reduced by the amount of their corresponding retirement annuities.

Title 5 of the United States Code is the hiring authority for most Federal Government employees. Part III of Title 5 of the United States Code pertains specifically to Federal employees and their rights and responsibilities. Chapters 83 and 84 of Title 5 U.S.C., Part III involve Federal employees' retirement benefits and their rights and duties regarding their retirement. Title 5 U.S.C., Part III, Chapter 83, Subchapter III pertains to employees in the Civil Service Retirement System (CSRS) and 5 U.S.C., Part III, Chapter 84 pertains to employees in the Federal Employee Retirement System (FERS). Included in 5 U.S.C., Part III, Chapter 83, Subchapter III and 5 U.S.C., Part III, Chapter 84 are 5 U.S.C. §§ 8344 and 8468, which both state that if a retired annuitant becomes reemployed in an appointive or elective position (with certain exceptions that do not apply in this case), an amount equal to the annuity allocable to the period of actual employment shall be deducted from the annuitant's pay.

Veterans Health Administration (VHA) has direct authority under Title 38 to hire certain clinical personnel under processes established by VA. Although hired under the provisions of Title 38, certain aspects of Title 5 continue to apply to Title 38 employees. Specifically, 38 U.S.C. § 7426(a) states that persons appointed to [VA] shall be subject to the provisions of and entitled to benefits under Subchapter III of Chapter 83 of Title 5 [5 U.S.C. §§ 8331 *et seq.*] or Subchapter II of Chapter 84 of Title 5 [5 U.S.C. §§ 8410 *et seq.*], whichever is applicable. Therefore, employees appointed to VA under the authority of Title 38 of the United States Code continue to be subject to the provisions 5 U.S.C. §§ 8344, 8468. Accordingly, reemployed annuitants hired under Title 38 authority are subject to the provisions in Title 5 requiring that any pay received from reemployment with the Federal Government be reduced by the amount of retirement annuity received.

Under Title 38 U.S.C. § 7405(a)(2), VHA has authority to hire certain types of employees on a fee-basis. This section does not specifically address hiring retired annuitants. VA Handbook 5007, Part II, Appendix F, Paragraph 1(d), which implements 38 U.S.C. § 7405(a)(2), provides an exception to 5 U.S.C. §§ 8344 and 8468 and states that civil service annuitants appointed on a fee-basis are not

subject to any reduction of their fees. VA's Compensation and Classification Service, the group responsible for VA Handbook 5007, stated that the reason for not reducing the fee-basis employee's pay is that the fee-basis employee does not have a pay rate and does not have a period of time to work, as the fee-basis employee is required to work on an as-needed basis, not a set schedule, and does not receive an hourly wage. Title 5 U.S.C. §§ 8344 and 8468 state that if an annuitant becomes reemployed, an amount equal to the annuity allocable to the *period of actual employment* shall be deducted from the annuitant's *pay* (italics added). The Compensation and Classification Service reasoned that as the fee-basis employee does not have an actual period of employment and does not receive typical pay, then a fee-basis employee would not fit the provisions of these statutes requiring an off-set.

We asked VA's OGC for an opinion whether 5 U.S.C. §§ 8344 and 8468 apply to fee-basis employees. After reviewing the policy and applicable law, OGC requested an opinion from the OPM regarding the legality of VA Handbook 5007, Part II, Appendix F, Paragraph 1(d). OPM agreed with VA's Compensation and Classification Service and found that reemployed annuitants who are paid under fee-basis agreements by task, not a time-basis, may continue to receive their full annuities without a reduction in salary. OPM held that the offset required by 5 U.S.C. §§ 8344 and 8468 only pertains to a reemployed annuitant whose pay is time-based.

We found that in CY 2007, 19 fee-basis appointees were retired VA nurses being paid on a time-basis. In CY 2008, there were 23 fee-basis appointees who were retired nurses being paid on a time-basis. As discussed above, the Portland VAMC violated VA Handbook 5007, Part II, Appendix F, Paragraph 3(b) by paying these fee-basis employees on a time-basis instead of per procedure or task. Because the Portland VAMC intended to hire nurses to be paid on a time-basis, the proper procedure should have been to hire these employees under authority other than 38 U.S.C. § 7405(a)(2), such as on a temporary full-time, part-time, or intermittent basis under 38 U.S.C. § 7405(a)(1). Hiring under these provisions would clearly have required a reduction of pay by the retirement annuity received as payment would have been time-based.

Because these retired nurses were hired as fee-basis appointees, the Portland VAMC did not reduce the annuitants' fees by the retirement annuity received. However, pursuant to VA Handbook 5007, Part II, Appendix F, Paragraph 1(d) and OPM's decision, reemployment as a fee-basis appointee must not be time-based for this provision to be applicable. Because the Portland VAMC had no authority to hire these retired nurses under fee-basis agreements with time-based payments, the retired nurses' pay should have been reduced by the amount of retirement annuities received.

Conclusion

The Portland VAMC inappropriately used fee-basis agreements with time-based payments to hire retired nurses. Payments to the retired VA nurses who entered into the time-based fee-basis agreements should have been reduced by their retirement annuity as required under 5 U.S.C. §§ 8344 and 8468. The Portland VAMC should have used an authority other than 38 U.S.C. § 7405(a)(2), such as temporary full-time, part-time, or intermittent employees under 38 U.S.C. § 7405(a)(1).

Issue 3: Whether the Portland VAMC violated VA policy when it agreed to pay fees to fee-basis appointees in excess of the \$15,000 annual limitation.

Findings

We concluded that the Portland VAMC violated VA policy when it agreed to pay fees to fee-basis appointees in excess of the annual \$15,000 limitation in those cases in which a waiver was not obtained from the facility director.

VA Handbook 5007, Part II, Appendix F, Paragraph 4(a) states that the total of payments to consultants and attendings (excluding nurse anesthetists) and on-station fee-basis appointees (excluding special duty nurses) may not exceed \$15,000 in a calendar year. Paragraph 4(c) of this section allows for an exception to the \$15,000 annual limitation if the amount is approved by the facility director.

We found that 57 of the 68 CY 2007 fee-basis agreements and 68 of the 74 CY 2008 fee-basis agreements exceeded the \$15,000 annual limitation. Two of the 58 CY 2007 and 6 of the 68 CY 2008 agreements that exceeded the \$15,000 limitation did not include a waiver from the facility director to exceed the annual limitation. The former Acting Chief of HR and the Acting Supervisor of Employee and Labor Relations told us that this must have been an oversight because their usual practice is to obtain a waiver for any fee-basis agreement that would exceed the \$15,000 annual limitation.

Conclusion

The failure to obtain waivers from the facility director to allow the payments in excess of \$15,000 in fees for the two fee-basis nurses in CY 2007 and the six fee-basis nurses in CY 2008 violated VA policy.

Issue 4: Whether the Portland VAMC violated VA policy by paying fees in excess of the amount approved in the fee-basis agreement.

Findings

We concluded that the Portland VAMC violated VA policy by paying fee-basis appointees in excess of the amount approved in the fee-basis agreements.

VA policy states that once the payment amount is approved, the facility is not allowed to pay a fee-basis appointee an amount in excess of the amount allowed in the fee-basis agreement. *See* VA Handbook 5007, Part II, Appendix F, Paragraph 4. To ensure that actual payments made to fee-basis appointees do not exceed the amount allowed in the fee-basis agreement, VA policy provides that:

- ◆ Human Resources Management (HRM) Officers, or designees, will monitor fee-basis salary limitations, provide technical advice, guidance, and assistance to officials regarding salary limitations, and will maintain necessary records and documentation regarding fee payments.
- ◆ HRM officials will code the approved annual pay limitation for each fee-basis employee into the PAID system.
- ◆ The PAID system will generate a biweekly message to the facility when a fee-basis employee is within ten percent (10%) of reaching the annual pay limitation in the employee's master record.
- ◆ HRM officials will be responsible for notifying key management officials when a fee-basis employee is nearing the pay limitation.

VA Handbook 5007, Part II, Appendix F, Paragraph 5.

The Acting Supervisor of Employee and Labor Relations told us that the Portland VAMC has implemented a system that monitors payments to fee-basis appointees as required by the VA policy. Although this process was in place in 2007, the former Acting Chief of the HR department told us that the procedure was not being used at that time due to high employee turnaround within the HR department. She told us that the procedure is currently being used.

We obtained records showing the actual amount paid to the fee-basis nurses for CYs 2007 and 2008 from the VA PAID system and compared these amounts to the annual limitations approved in the fee-basis agreements. We found that due to lack of oversight, in CY 2007, the HR department allowed four fee-basis nurses to be paid in excess of the amount approved in their fee-basis agreements. For CY

2008, there were no payments made in excess of the annual limitations provided in the fee-basis agreements.

Conclusion

The Portland VAMC violated VA policy by paying the four fee-basis employees more than the annual limitation allowed by the fee-basis agreements in CY 2007. As the monitoring system was not being utilized, the Portland VAMC was not able to monitor the payments to the fee-basis appointees to ensure that annual limitations were not exceeded and to ensure compliance with VA policy.

Recommendations

We recommend that the VISN 20 Director:

1. Take action to ensure that the Portland VAMC HR department complies with the provisions of VA Handbook 5007, Part II, Appendix F (Compensation of Consultants, Attendings, and Others Employed on a Fee Basis Under 38 U.S.C. § 7405) when approving and administering fee-basis agreements.
2. Take action to immediately discontinue any fee-basis agreements currently in effect at the Portland VAMC that pay fee-basis appointees on a time-basis and convert these employees to either a full-time, temporary full-time, part-time, or an intermittent employee, whichever is appropriate.
3. Take action to ensure that the Portland VAMC HR department complies with the provisions of 5 U.S.C. §§ 8344, 8468 (Annuities and Pay on Reemployment) when hiring retired annuitants who are paid on a time-basis.
4. Regarding the annuitants who were re-employed as fee-basis employees and were paid on a time-basis, take action to retroactively reduce their fees earned in CYs 2007 and 2008 by the annuities received, pursuant to 5 U.S.C. §§ 8344(a), 8468(a), and pursue collection of these amounts.
5. Take appropriate action against the employee in HR who approved the fee-basis agreements for CY 2008 and allowed the fee-basis appointees to be paid on a time-basis, which violated VA policy.
6. Take appropriate action against the Portland VAMC Director who approved the fee-basis agreements that allowed fee-basis appointees to be paid on a time-basis, in violation of VA policy.

7. Provide training regarding the provisions of VA Handbook 5007, Part II, Appendix F (Compensation of Consultants, Attendings, and Others Employed on a Fee Basis Under 38 U.S.C. § 7405) relating to the management of fee-basis agreements to personnel at the Portland VAMC who are in a position to request or approve fee-basis agreements.

Management Comments

Department of Veterans Affairs

Memorandum

Date: February 23, 2009

From: Acting VISN Director (10N20)

Subj: Draft Office of Inspector General Report February 2009 - Review of Allegations of Mismanagement of Fee Basis Appointments, VA Medical Center, Portland, Oregon

To: Director Hotline Division

1. The following response is provided to Department of Veterans Affairs Office of Inspector General Draft Report regarding allegations surrounding the appointment of fee-basis Registered Nurses paid on a time-basis and the fee-basis appointments of Registered Nurses who were re-employed annuitants:
2. Alleged Issue/Allegation(s):
 - a. How was the incident reviewed: The report was reviewed by the Portland Executive management team and the Human Resources Officer.
 - b. Whether the allegation was substantiated: The allegation regarding the payment of some of the Registered Nurses and Registered Nurses who were reemployed annuitants appointed as fee-basis and paid on a per time basis is substantiated.
 - c. Corrective action to be taken:
 - 1) Take action to ensure that the Portland VAMC HR department complies with the provisions of VA Handbook 5007, Part II, Appendix F (Compensation of Consultants, Attendings, and Others Employed on a Fee Basis Under 38 U.S.C. § 7405) when approving and administering fee-basis agreements.

The Human Resources Management Service (HRMS) in conjunction with the Chief of Staff's office will develop a local Medical Center Memorandum (MCM) that delineates the roles and responsibilities of management officials for the administration of the fee-basis program. In addition Human Resources Officer will develop and provide training to all Human Resources Specialists on the regulatory requirements of managing a

fee-basis program, accordance with VA Handbook 5007. HRMS will monitor fee-basis appointments, and all future requests for fee-basis appointments will be scrutinized to ensure the appointments meet the regulatory requirements. A fee-basis checklist will be required as part of overall documentation for fee-basis appointments.

- 2) Take action to immediately discontinue any fee-basis agreements currently in effect at the Portland VAMC that pay fee-basis appointees on a time-basis and convert these employees to either a full-time, temporary fulltime, part-time, or an intermittent employee, whichever is appropriate.

HRMS, in cooperation with the Chief of Staff's office, has identified the fee-basis Registered Nurses who were appointed on a time-basis and those individuals will have their fee-basis appointments terminated. The Nurses will be placed on appropriate appointments and work schedules (part-time, full-time or intermittent). In an effort to eliminate any unnecessary disruption to patient care, all RN fee-basis appointments will be terminated no later than March 15, 2009.

- 3) Take action to ensure that the Portland VAMC HR department complies with the provisions of 5 U.S.C. §§ 8344, 8468 (Annuities and Pay on Reemployment) when hiring retired annuitants who are paid on a time-basis.

Immediate corrective action is being taken and training of the Human Resources staff on annuities and pay on re-employment will be completed on February 18, 2009.

- 4) Regarding the annuitants who were re-employed as fee-basis employees and were paid on a time-basis, take action to retroactively reduce their fees earned in CYs 2007 and 2008 by the annuities received, pursuant to 5 U.S.C. §§ 8344(a), 8468(a), and pursue collection of these amounts.

Upon verification of the monthly annuities for the re-employed annuitants, HRMS will initiate collection procedures for the annuity off-set for those reemployed annuitants who were compensated via the fee-basis program on a time basis instead of task/procedure during the calendar year 2007 and 2008. If appropriate, the medical center will assist affected employees with waivers through the appropriate waiver process.

- 5) Take appropriate action against the employee in HR who approved the fee-basis agreements for CY 2008 and allowed the fee-basis appointees to be paid on a time-basis, which violated VA policy.

The VISN office is working with VHA's Office of Management Support to determine appropriate action.

- 6) Take appropriate action against the Portland VAMC Director who approved the fee-basis agreements that allowed fee-basis appointees to be paid on a time-basis, in violation of VA policy.

The Acting VISN Director disagrees with this recommendation. Based upon conversations with the Office of Management Support, we feel he relied in good faith upon the expertise of Portland's HR Office, had no knowledge of the breach of regulations and should not be held accountable. The Director understands the seriousness of the issue and has taken appropriate steps to ensure this matter is resolved.

- 7) Provide training regarding the provisions of VA Handbook 5007, Part II, Appendix F (Compensation of Consultants, Attendings, and Others Employed on a Fee Basis Under 38 U.S.C. § 7405) relating to the management of fee-basis agreements to personnel at the Portland VAMC who are in a position to request or approve fee-basis agreements.

In conjunction with the Chief of Staff's Office, Human Resources Management Service (HRMS) will present fee-basis training covering the provisions of VA Handbook 5007, Part II Appendix F and VA Handbook 5005 the week of February 23, 2009. All administrative staff responsible for developing and submitting justification for establishment of the fee program in their Service/Department will be provided training on their roles and responsibilities in the proper management of a fee-basis program and monitoring of fee rates and annual fee limitations.

- d. Completion dates of corrective action: Corrective will be completed by March 15, 2009.
3. If you require any further information, please contact David Stockwell, Deputy Director, Administration and Finance, at 503-220-8262, extension 51014.

(original signed by Sherri L. Bauch, Acting Deputy Network Director, for:)
Michael W. Fisher

Appendix B

OIG Contact and Staff Acknowledgments

OIG Contact	Maureen Regan
Acknowledgments	Marsha O'Mara

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