NATIONAL POLICY ON COMMUTED OVERTIME FOR MEDICAL & DENTAL PERSONNEL

DEPARTMENT OF HEALTH

INDEX

Page

NATIONAL POLICY ON COMMUTED OVERTIME FOR MEDICAL AND DENTAL PERSONNEL

1. POLICY PURPOSE

The purpose of this policy is to regulate the management of the commuted overtime system for medical personnel including its practical challenges. Specific monitoring and control measures are therefore prescribed.

2. GLOSSARY OF TERMS/DEFINITIONS

2.1 **Normal hours of work:** The first 40 hours of work per week that a medical practitioner is scheduled to work in accordance with a duty roster.

2.2 **Commuted overtime hours:** The hours of work additional to the total number of normal hours of work required by the employer to render a health service within a health facility in terms of operational needs. It should be only duty in excess of the prescribed hours of attendance, authorized by the relevant delegated authority.

2.3 **Commuted overtime system:** A flexible system averaging the overtime hours worked to accommodate medical practitioners who perform scheduled overtime on a regular basis over a 4-week period.

2.4 **1st On-call:** The medical practitioner is on site at the health facility for the full duration of the on-call hours. These hours are classified as actual commuted overtime hours.

2.5 **2nd On-call:** The medical practitioner is off-site and is rostered for 2nd call in order to be available to render clinical advice with regard to patient care.

- This could be advise rendered telephonically in which case 30% of the time spent at home (off-site) will be classified as actual commuted overtime hours.

- Should the medical practitioner have to come in to the health facility to attend to clinical duties, all hours spent on-site during 2nd call will be classified as actual commuted overtime hours.

2.6 **CEO:** Hospital or Facility Manager that is not directly responsible for the management of clinical services.

2.7 **Chief Medical Officer:** Clinical Manager who is directly responsible for the management and control of clinical services rendered by medical practitioners and health professionals.

3. GENERAL PRINCIPLES

3.1 **Scope of applicability**

(a) The commuted overtime system is applicable to:

- All full-time medical personnel employed in a permanent or temporary capacity who are rendering actual clinical, patient related services on an organized basis within a health facility may participate in the commuted overtime system where, on a continuous basis, the need exists for the rendering of such overtime duties.

- A medical practitioner who has entered into and fulfills the requirements of a commuted overtime contract.

(b) **Exclusions:** The commuted overtime system is however not applicable to:

- Part-time medical personnel who are employed for less than 40 hours per week as well as sessional medical personnel.

3.2 **Effect of Organization and Establishment Control**

Medical practitioners do not partake in shift work. As a result of this, the filling of posts will only reduce the need for overtime hours during normal hours of work, i.e. between 07:00 to 19:00. After hours, i.e. from 19:00 to 07:00, will always necessitate the rendering of overtime duties.

3.3 **Payment of commuted overtime during periods of leave**

3.3.1 Commuted overtime is payable to medical personnel who participate in the commuted overtime system for periods of annual leave within each financial year (i.e. from 1 April of a year to 31 March of that year) on the following basis:

- 22 working days in respect of employees with less than 10 years' service;
- 26 working days in respect of employees with more than 10 years' service;
- 28 working days in respect of employees appointed as public servants prior to 1 January 1966 as well as former provincial employees appointed prior to 1 January 1978.

-3-

3.3.2 Commuted overtime will not be paid during special-, sabbatical-, shop steward-, family responsibility- and maternity leave. Provision must be made to ensure that the amount of commuted overtime payable per month is decreased on a pro-rata basis in cases where such absences occur during the course of a month.

3.3.3 With due regard to absences in respect of periods of sick leave where the individual is not in a position to fulfill his/her commuted overtime contractual obligation during a specific month, the commuted overtime rate must be reduced on a pro-rata basis.

3.3.4 No reduction of commuted overtime must however take place in cases where an individual for the reasons as set out hereunder is able to fulfill his/her commuted overtime-contractual obligation during a specific month:

3.3.4.1 With regard to short periods of sick leave where an individual is absent on the day(s) where he/she is **not** rostered to perform after-hour duties.

3.3.4.2 With regard to periods of sick leave where the individual is rostered to perform after-hour duties, but is able to meet his/her after-hour commitment by interchanging (swopping) his/her after-hour duties with other doctors in a specific month. This arrangement must be approved by the supervisor (clinical manager). The supervisor (clinical manager) must certify on the Z1(a) (leave form) that the commuted overtime commitment for the sick leave period was worked in.

3.3.5 **Carry over of commuted overtime hours:** Medical personnel are not allowed to carry over their rostered after-hour commitment for a specific month to the following months to avoid the reduction of commuted overtime remuneration in the specific month where they were not able to meet their rostered overtime commitment in respect of that specific month due to absence on sick leave.

3.4 **Suspension**

Commuted overtime remuneration is not payable in cases where employees have been suspended from duty with full emoluments. In view of the fact that commuted overtime does not form part of the salary packages of medical personnel, it is not payable to employees during periods of suspension from duty with full emoluments.

3.5 **Training and research**

3.5.1 The payment of commuted overtime remuneration is limited to the rendering of actual patient related clinical services as needed by the Department of Health and therefore is not applicable to any academic/ training or research functions.

-4-

3.5.2 With regard to employees appointed on public service conditions of employment (Joint Staff) at academic/psychiatric institutions in terms of the Joint Agreement, the time spent by such personnel on teaching and research may not be included in overtime calculations. The aforesaid employees may spend time to a maximum of 14 hours per week on teaching and research activities. These activities must be included in the normal official 40-hour workweek core service (i.e. the normal 40 hour workweek may consist of a minimum of 26 clinical service hours and a maximum of 14 hours teaching/research activities).

3.5.3 Time spent by registrars in receiving formal training/teaching is regarded as on duty, whilst time spent on own study should not be taken into account.

3.6 **Standby duty**

3.6.1 In terms of the measures set out in the Collective Agreement on overtime (PSCBC Resolution 3 of 1999), an employee may only be paid overtime remuneration for work performed in addition to his/her contracted hours of work (i.e. 40 normal official hours per week).

3.6.2 Periods of **on-call** are not regarded as standby duty according to the standby duty measures applicable to the rest of public service employees.

4. PERIODIC REVIEW AND CONTROL MEASURES

4.1 In terms of the Public Finance Management Act, the Head of Department as Accounting Officer must ensure that he/she implements and maintains effective and efficient systems of financial and risk management and internal control measures. With due regard to the above, the commuted overtime system as part of a remuneration system is therefore subject to periodic review in order to reduce the risk of irregular expenditure and/or financial misconduct.

4.2 It will be necessary for all participants in the commuted overtime remuneration system to complete commuted overtime contracts.

4.3 The following mechanisms should be implemented to manage, monitor and control the payment of commuted overtime efficiently:

(i) Normal working hours duty roster of the component
(ii) On call duty roster of the component
(iii) Duty hours register of the individual

4.4 To further reduce the risk, the following control measures will apply:

4.4.1 Duty rosters must be made available to the Heads of Institutions in advance. The duty roster must indicate the normal official duties required in the component and another on call roster must indicate the individuals who are scheduled to be on 1st call and 2nd call.

4.4.2 The Heads of Institutions will verify the overtime worked by participants in the commuted overtime system in accordance with their record of monthly duty hours and the relevant duty roster of the component's clinical service delivery.

4.4.3 All Heads of Clinical Departments/supervisors will certify the hours overtime worked in the rendering of clinical services on a monthly basis for each participant to the system within his/her Clinical Department/ Component. Furthermore, the said Clinical Head/supervisor will also indicate the vacation-, special- and sick leave taken during the month by each participant.

4.4.4 It is the responsibility of the Head of a Clinical Department/supervisor to submit all applications for leave approved by him/her directly to the staff office of the institution. HR offices will reconcile the duty hour register with the leave applications on a monthly basis.

4.4.5 The Head of Department, as Accounting Officer, may on instruction request audits of the commuted overtime system within institutions from time to time, to monitor the compliance of medical staff to the commuted overtime system and the conditions of the contract in accordance with the duty rosters.

4.4.6 Commuted overtime **can only be earned when performing actual patient related clinical services at the workplace**. This can either be 1st on call (on-site) or overtime duties performed additional to the normal 40 working hours.

4.4.6.1 Notwithstanding the afore-mentioned, if the medical practitioner is off-site and is

rostered for 2nd on call, 30% of the time spent at home (off-site) will be classified as actual commuted overtime hours.

4.4.6.2 Should a medical practitioner who is rostered for 2nd on call have to come in to the health facility to attend to clinical duties, all hours spent **on-site** during 2nd on call will be classified as actual commuted overtime hours.

-6-

4.4.7 All commuted overtime contracts of medical personnel will be reviewed annually on an individual basis by the responsible Chief Directors in collaboration with the Heads of Clinical Departments, in terms of the existing operational need for such overtime work. Furthermore, all renewed contracts will be authorized by the Head of the Department of Health or his/her delegate.

4.5 It must be emphasized that, in terms of the commuted overtime contract, the Heads of Clinical Departments/supervisors will take responsibility and accountability should any malpractice be identified with the compliance to the conditions and practices of the system. In this regard cognizance should be taken of Section 81(1)(b) of the Public Finance Management Act in the event of authorizing expenditure for overtime not performed.

4.6 Heads of Institutions as well as Heads of Clinical Departments/supervisors are instructed to ensure that the above control measures are implemented and maintained effectively.

4.7 When medical practitioners change from one work sphere to another or from one rank to another, they will have to complete a new contract because of changed circumstances. It must be accepted that such changes might result in a reduction in the commuted overtime rate, e.g. appointment of a medical officer to CEO/Chief Medical Officer position.

4.8 The continued need for additional overtime hours should be reviewed when vacant posts are filled.

4.9 It is the duty of Heads of Departments to ensure that persons who make themselves part of fraudulent practices with regard to overtime, are dealt with in terms of the relevant disciplinary measures.

4.10 Medical practitioners working in a capacity/rank identified to participate in the commuted overtime system, must, before the commuted overtime remuneration is payable to him/her, sign an undertaking in which he/she undertakes to accept that the payment of the applicable commuted overtime rates be terminated:

- on transfer/promotion to a post/rank not identified to participate in the dispensation; and
- where the establishment position is favourable to such an extent that the need for overtime on a commuted basis expires.

4.11 Commuted overtime payment terminates:

- where the recipient is transferred/promoted to a post/rank not identified to participate in the dispensation;

- where the establishment position is favourable to such an extent that the need for overtime on a commuted basis expires;
- where the incumbent of a post of supervisor is not directly linked to the supervision and management of clinical medical services.

4.12 The commuted overtime tariffs are fixed and must not be taken into account when:

- any benefits/payments are determined which are derived from/based on basic salary; and
- officers and employees are classified according to their salaries, for purposes of granting any service benefit, payment of housing allowance, overtime remuneration and any allowance, etc.

4.13 Commuted overtime is payable, as is basic salary, in installments over a period of a year together with basic salary and where a reduced/increased basic salary is payable on a pro rata basis, for whatever reason, the commuted overtime tariff must be reduced/increased in the same ratio.

5. COMPULSORY OVERTIME AND REFUSAL TO WORK OVERTIME

5.1 In terms of the Basic Conditions of Employment Act, 1997, an employer may not require or allow an employee to work overtime except by an agreement. This agreement may be an agreement between the employer and an individual employee or it may be a collective agreement.

5.2 The collective agreement regulating overtime in the Public Service (PSCBC Resolution No. 3 of 1999, Part VII) specifically stipulates that the definition of overtime in the relevant agreement refers to work in excess of hours of work per week or month that **an employee has contracted to perform**. With due regard to the foregoing an employee in the Public Service cannot be compelled to work overtime. The commuted overtime system which was consulted with organized labour is based on the same principles.

5.3 In terms of the commuted overtime system, medical personnel engaged in actual patient related clinical work on an organized basis, **may participate** in the aforesaid system **provided that the operational need exists for the rendering of overtime duties** and on the understanding that the individual fulfills the requirements as set out in the relevant commuted overtime contract. The contract only becomes effective once both parties have signed it. It is therefore clear that full-time medical personnel do not automatically qualify for participation in the commuted overtime system, that participation is voluntary, that the hours overtime to be performed are

per mutual agreement and that participation is subject to the terms and conditions as set out in the contract. Therefore should an individual not be prepared to apply for participation in the scheme, the terms and conditions of the relevant system does not apply to him/her and the employer cannot expect such a person to perform overtime under **normal**

circumstances.

5.4 In terms of current legislation, an employer may only expect an employee to work in excess of normal working hours in **exceptional** circumstances such as in cases of emergency, and not due to other factors such as personnel turnover, etc. The employer is also not in a position to compel an employee to perform overtime duties in cases where no agreement on the performance of such overtime duties exists between the employer and the employee. In the case of medical personnel, the commuted overtime contract constitutes such an agreement. Although the foregoing has the effect that existing medical personnel will be acting fully within their rights to refuse to work **non-contractual overtime, it has been held in court that an employer may dismiss an employee who persistently and unreasonably refuses to work overtime as required by the employer due to operational needs**.

5.5 In order to accommodate the Department's specific need regarding overtime hours needed and with due regard to the fact that it is the prerogative of the Department to determine the conditions attached to employment within the parameters of the regulatory framework (i.e. Public Service Act, 1994 (as amended), Labour Relations Act, 1995 (as amended), the Public Service Regulations, 2001, and Collective Agreements), the opinion is held that institutional heads should, **based on operational requirements**, determine before advertising and filling of posts whether or not it will be required of the successful candidate to perform overtime duties on an organized basis. In cases where the successful candidate will be expected to perform overtime duties on an ongoing, organized basis due to the nature of the post, this issue must be specified in the advertisement, be included in the job description and clearly stipulated in the relevant employment contract. In such instances the successful candidate will be fully aware of the fact that he/she will be required to perform overtime duties and by applying and accepting such an appointment on the terms stipulated, the successful candidate is obligated to perform overtime duties. In these cases the employer has the right to call in overtime in terms of the contract of employment and refusal by an employee to perform contractual overtime will constitute a disciplinary offence.

-9-

5.6 With due regard to the aforesaid it is advisable that the number of overtime hours needed per institution be managed as follows:

5.6.1 Heads of Institutions must determine their actual clinical, patient related hourly overtime need (operational requirements) per week, preferably over a 12-month period. Once the overall need has been established, the actual number of overtime hours required per week must be allocated to the filled posts of medical/dental personnel (as applicable) on an individual basis. With the aforementioned information at hand the institutional head, on identifying the need for the filling of a vacant post in the above-mentioned group, will be aware whether or not the post incumbent will be required to perform overtime duties or whether the overtime already allocated to filled posts can be reduced. In the latter instance the current commuted overtime contracts of existing employees will have to be revised or cancelled and new contracts entered into. Record of this exercise must be kept on file as it, inter alia, could serve as documented proof should a dispute arise pertaining to whether or not the requirement of the employer for the rendering of overtime duties in respect of a specific post incumbent was based on operational requirements.

5.6.2 In cases where there is a need for the performance of overtime duties at an

institution and certain existing medical personnel at such an institution are not prepared to perform overtime duties (i.e. not prepared to voluntarily participate in the commuted overtime system or are no longer prepared to continue with the performance of overtime duties as contracted for and cancel their existing commuted overtime contracts), **their discharge in terms of section 17(2)(c) of the Public Service Act, 1994 (as amended) may be considered**. Before proceeding with the termination of services in terms of the aforementioned section, the following process should be followed. It is important to note with regard to the actions as set out hereunder, that the employee must be afforded the opportunity to be represented by his/her union representative:

5.6.2.1 Consultation process:

(a) Request the relevant employee in writing to perform the required number of hours overtime duties per week based on the operational requirements of the institution involved. In the request elaborate on the negative impact on the work situation (i.e. the effect on service delivery to patients and his/her co-workers) should the employee not be prepared to perform the required overtime duties. Request the employee to respond in writing within a specified period of time whether or not he/she is willing to perform the required overtime duties and should he/she not be prepared to perform such duties, to submit reasons.

-10-

(b) Should the employee respond negatively to the written request, inform the employee (if verbally, follow up in writing) of the fact that his/her refusal to perform overtime duties has a detrimental effect on service delivery to patients and that his/her action cannot be accommodated in the work situation of the institution concerned. Furthermore, the employee must be informed that the head of institution has no other option but to seek an alternative position in another component in the same hospital or at another institution for the employee in question where it is not a requirement to render overtime duties (i.e. relocate by means of transfer mechanism). Also inform the employee that should it not be possible to secure a transfer to another position under the control of the Department of Health, the head of institution has no other alternative but to request a termination of service in terms of section 17(2)(c) of the Public Service Act, 1994 (as amended).

5.6.2.2 Actions to secure other employment:

Approach (in writing) the higher level authority (Regional Director/Chief Director), explain the problem and request them to indicate whether it is possible to accommodate the employee in question in a suitable position at any of the institutions under their control. Upon receipt of the response, inform the employee concerned whether or not he/she can be accommodated elsewhere. Where applicable, execute the necessary transfer actions.

5.6.2.3 Termination of services:

In cases where it is not possible to accommodate the employee elsewhere, such an employee must be informed that every endeavor was made to secure alternative employment but without any success. Furthermore, that due to the foregoing and the fact that the continuous employment of the individual at the relevant institution negatively impacts on the operational requirements of the employer due to his/her refusal to perform the required overtime duties, the employer has no option but to request the termination of service in terms of section 17(2)(c) of the Public Service Act, 1994 (as amended). The employee must be given the opportunity to respond within a reasonable time and such response must be thoroughly considered before the final recommendation is made for the

termination of service.

6. **CATEGORIES OF OVERTIME REMUNERATION**

6.1 The commuted overtime system makes provision for four categories of overtime remuneration. The purpose is to make provision for a flexible system in order to accommodate medical and dental personnel who do not perform overtime on a regular basis, as well as those employees who regularly perform overtime duties.
-11-

6.2 The **four categories** are as follows:

Group 1	0-4 hours per week	May claim for actual hours overtime worked where such duties are needed, as applicable to other categories of staff in terms of PSCBC Resolution 3 of 1999
Group 2	5-12 hours per week (average of overtime worked may not be less than 8 hours per week)	Overtime remuneration is payable at a fixed tariff equal to 8 hours per week at 1.3 of the applicable hourly tariff
Group 3	13-20 hours per week (average of overtime hours worked may not be less than 16 hours per week)	Overtime remuneration is payable at a fixed tariff equal to 16 hours per week at 1.3 of the applicable hourly tariff
Group 4	>20 hours per week	Overtime remuneration is payable at a fixed tariff equal to 16 hours per week at 1.3 of the hourly tariff plus actual hours worked in excess of the limit of 20 hours at the applicable overtime tariff as per PSCBC Resolution 3 of 1999

6.3 Group 1

As indicated above, the measures contained in PSCBC Resolution 3 of 1999 are applicable provided that the control measures as set out in the aforementioned agreements are adhered to. Application forms and time sheets in respect of such claims must be completed by the relevant supervisors and submitted to the delegated authority for evaluation and approval (currently District Managers, Chief Director (Academic Hospitals), or Head of Institution). The commuted overtime contract is not applicable to medical personnel who resort under Group 1. In general, a maximum of 4 hours overtime remuneration is applicable to Group 1. This may only be exceeded in **exceptional** circumstances.

6.4 Groups 2 and 3

Medical personnel who wish to participate in the commuted overtime system as indicated

in Groups 2 and 3 must complete the commuted overtime contract. The Heads of Clinical Departments, are responsible for verifying the contract as measured against the need for overtime services in their clinical departments. Heads of Institutions are responsible for the approval of individual contracts and are accountable to the Auditor-General for the effective control of the overtime system. District Managers/Chief Directors of Academic Hospitals are regarded as Heads

-12-

of Institutions in cases where Heads of Institutions (medical superintendent/senior medical superintendent) wish to participate in the commuted overtime system. Should it be required of these personnel to perform overtime work in excess of 20 hours per week, they must be compensated in terms of the provisions as set out for Group 4.

6.5 Group 4

6.5.1 With regard to individuals in Group 4, Heads of Institutions are **urged to limit the need** for overtime duties in excess of 20 hours per week. Claims and the subsequent payment for hours worked in excess of 20 hours per week shall under normal circumstances be limited to a maximum of 32 hours per week in accordance with the measures of Public Service Regulations, Part V, D2. This limit may only be **exceeded in exceptional, fully motivated circumstances**, e.g. in cases where an individual is compelled to perform additional overtime duties as the result of severe staff shortages or in a crisis situation. Claims in respect of every hour worked in excess of 20 hours to a maximum of 32 hours will be administered in terms of the measures and criteria as contained in Chapter VII of Resolution 3 of 1999. These claims must be accompanied by the prescribed application forms and time sheets, and must be duly completed by the relevant supervisor to be submitted to the delegated authority on a monthly basis for evaluation and approval. The claims must be supported by a written motivation, with due consideration to compliance with the normal official 40 hour workweek.

6.5.2 All medical personnel (including those who participate in the commuted overtime system at their own institutions) who are willing to perform additional duties at other hospitals, community health centres and primary health care clinics, may perform such duties. Such personnel may claim for actual hours overtime duties performed at the relevant institutions at the prescribed rates as set out in Chapter VII of Resolution 3 of 1999 on the condition that the criteria as mentioned in the afore-mentioned paragraph are adhered to and provided that the Head of the employing institution is in agreement with the arrangements.

6.6 With regard to personnel in the occupational classes Chief and Principal Specialist, as well as Medical Superintendent, the following restrictions are placed on the maximum number of hours overtime which are payable according to commuted rates.

6.6.1 Medical Superintendent, Senior and Chief Medical Superintendent:

- Medical Superintendents and Senior Medical Superintendents who render clinical services in excess of the 12 hours commuted overtime per week, may apply for inclusion in Group 3 in order to provide relief where there is a need for clinical services.

-13-

- If a Medical Superintendent applies to partake in Group 3, the Group 2 (8 hours) contract lapses. Medical staff may only partake in one commuted overtime contract during a specific period.

6.6.2 Principal Specialist/Chief Specialist:

12 Hours per week.

7. **SPECIFIC PROVISIONS**

7.1 The payment of the commuted overtime rates is only payable to medical officers, registrars, specialists and medical superintendents. **(OSD terminology should be used in terms of post classes.)**

7.2 A Hospital Manager or medical superintendent who is not directly responsible for the management and control of clinical medical services does not qualify for commuted overtime.

7.3 The clinical operational officer who is the supervisor of clinical services will qualify for commuted overtime.

7.4 Dentists:

7.4.1 There has to be an **approved monthly overtime roster** for dentists linked to specific hospitals.

7.4.2 A **standby allowance** (or as may be determined) is paid for the days that the dentist is on call.

7.4.3 **Actual time worked is recorded in the register** every time the dentist is called to the hospital for clinical work.

7.4.4 The dentist is **compensated at applicable overtime hourly rate for actual hours** worked (Group 1).

8. **POLICY OBJECTIVE**

8.1 The policy on commuted overtime for medical and dental practitioners seeks to guide the dispensation, whilst ensuring that the employing authorities stay on top of matters to prevent abuse thereof.

8.2 The fundamental tenets of this policy are dependent on the ability of the Department of Health to meets its human resource needs in the Public Health Sector in the short, medium and long term.

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