

# NIH Policy Manual

## 2300-590-1 - Title 38 Physician and Dentist Pay

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Transmittal Notice

1. **Explanation of Material Transmitted:** This chapter, 2300-590-1, Title 38 Physician and Dentist Pay, is being updated to make minor editorial changes, ensure operational links, adhere to the 5-year review requirement and reorder policy sections.
2. **Filing Instructions:**

**Remove:** NIH Policy Manual, Chapter 2300-590-1, dated 06/05/2017. Partial Revision, dated 12/23/2019.

**Insert:** NIH Policy Manual, Chapter 2300-590-1, dated 01/08/2024

**PLEASE NOTE:** For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Policy Manual, contact the Division of Compliance Management, OMA on 301-496-4606, or enter this URL: <https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx>.

### A. Purpose

This chapter describes policies for the payment of Title 38 Physician and Dentist Pay (PDP) to NIH physicians, podiatrists and dentists (hereinafter referred to collectively as **physicians**). This document is based on the U.S. Office of Personnel Management Title 38 Delegation Agreement, effective August 28, 2023, and must be used in conjunction with HHS Instruction 590-1, Title 38 Physician and Dentist Pay, dated December 17, 2021, and NIH Delegations of Authority, HR: Pay, No. 20, *Title 38 - Physician and Dentist Pay (PDP)* located in the NIH Delegations of Authority database.

## B. Scope

### 1. Eligibility

NIH physicians appointed under Title 5 (General Schedule) who are licensed and provide direct patient care services or services incident to direct patient care are eligible for Title 38 PDP.

### 2. Exclusions

Physicians:

- Serving in the PHS Commissioned Corps;
- Serving in an internship or residency training program;
- In the Senior Executive Service (SES), Executive Schedule (ES), Senior Level/Scientific (SL/ST), Senior Biomedical Research and Biomedical Product Assessment Service (SBRBPAS), Executive Level (EL), or other senior-level systems;
- Receiving Physicians' Comparability Allowance (PCA) under 5 U.S.C. § 5948;
- Who are appointed under a Title 42 authority;
- Serving on a part-time work schedule with a tour of duty of less than 20 hours per pay period; and
- Who do not provide direct patient care services or services incident to patient care

## C. Background

This Manual Chapter, in conjunction with HHS Instruction 590-1, Title 38 PDP, provides the NIH policy for the payment of Title 38 PDP to NIH physicians who perform direct patient care or services incident to patient care. Title 38 PDP is a pay authority to recruit and retain highly qualified physicians.

The law, 5 U.S.C. § 1104 and 5371, authorizes the OPM to delegate to agencies the authority to exercise certain personnel authorities under 38 U.S.C. Chapter 74 for health care occupations that provide direct patient care services or services incident to direct patient care. The OPM delegated this authority to the Secretary, Department of Health and Human Services (HHS), to pay Market Pay in addition to GS Base 1) GS base (non-locality) Pay and 2) Market Pay, which combined are called **Annual Pay**. Additionally, under 42 U.S.C. § 282(b)(22), the Director, NIH, may exercise the pay authorities under 38 U.S.C., Chapter 74, for physicians and other health care professionals. The NIH derives its Title 38 authority through the OPM Delegation Agreement and Title 42 U.S.C. § 282(b)(22).

**D. Policy**

1. Setting Pay

- a. Initial Annual Pay may not exceed the maximum Annual Pay for the Table/Tier of the VA Title 38 PDP Pay Ranges. Annual Pay consists of two components:
  - 1. General Schedule Base (non-locality) Pay (Title 5) – The GS rate for the grade is based on the OPM position classification. Pay setting upon initial appointment above step 1 of the grade is based upon consideration of appropriate factors warranting setting pay at an advanced rate, per HHS Instruction 531-1, “Setting Pay Based on Superior Qualifications and Special Needs.” HHS physicians who receive Market Pay under 38 U.S.C. § 7431(c) are no longer entitled to Locality Pay under 5 U.S.C. § 5304 or special rate supplements under 5 U.S.C. § 5305 or 38 U.S.C. § 7455; and
  - 2. Market Pay (Title 38 PDP) – Payment of Market Pay is discretionary and is used for recruitment and retention purposes and to help provide comparability with the current labor market.

*Example, using 2023 pay ranges.*

<b>Base Pay +</b>	<b>Market Pay =</b>	<b>Annual Pay</b>
GS-15/4: \$129,269 +	\$65,731 =	\$195,000

- b. Total Compensation includes Annual Pay (GS base (non-locality) pay plus Market Pay); recruitment, relocation, and retention incentives; performance awards; and other cash awards.
2. Compensation limits
- a. Aggregate Pay – Except for awards (under 5 U.S.C. chapter 45) and recruitment, relocation, and retention incentives (under 5 U.S.C. 5753 and 5754), total compensation payments during a calendar year (exclusive of lump sum annual leave, travel reimbursements, back pay, and severance pay) to physicians receiving Title 38 PDP under Title 5, cannot exceed the compensation received by the President of the United States (excluding expenses) as specified in 3 U.S.C. §102.
  - b. Other Discretionary Pay under Title 5 – Physicians who receive PDP may receive other forms of discretionary pay under Title 5, such as awards and recruitment, relocation, and retention incentives (excluding Title 38 PDP Market Pay). However, they are not eligible to receive a PCA while receiving PDP. The sum of GS base pay plus discretionary pay paid to a physician under the Title 38 pay authority is limited on an annual basis to the rate of pay for Executive Level I (EX-I).

## E. Responsibilities

The NIH Clinical Compensation Panel (NCCP), a working group of the NIH Compensation Committee (NCC), is responsible for Title 38 PDP program oversight and guidance, and for ensuring consistency and appropriateness in pay setting. Institutes, Centers, and Offices (ICOs) must submit all initial pay determination and pay increase cases for review by the NCCP in concert with the Title 38 PDP case submission guidance. The NCCP will:

- Review the ICO’s proposed pay table, tier level, and Annual Pay, based upon clinical specialty, for physicians and submit recommendations to the approving official for final decision;
- Evaluate the Annual Pay and tier level of each physician at least once every 24 months; and
- Conduct the peer review of Staff Clinician 2 and Staff Clinician (HS) positions.

### 1. Setting Market Pay

- a. Market Pay is intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician. At least once every two years the Secretary, Department of Veterans Affairs (VA), prescribes nationwide minimum and maximum amounts of Annual Pay (base (non-locality) pay plus Market Pay) that may be paid. The Secretary, VA, may prescribe different Annual Pay ranges for different specialties or assignments. There may be up to four tiers of Annual Pay for each specialty or assignment for which a separate range of pay has been approved. Each tier reflects different professional responsibilities, professional achievements, and/or administrative duties.
- b. The NIH has established three tiers, defined as follows:

<b>Tier</b>	<b>Definition</b>
Tier	Non-supervisory physician, podiatrist or dentist who provides patient care services in support of biomedical research.
Tier 2	Supervisory or Program Manager physician, podiatrist or dentist who functions as a fully credentialed, fully trained clinician with patient care responsibility.
Tier 3	Physician, podiatrist or dentist with independent resources (personnel, budget and space) who provides patient-related activities. Publishes and presents original peer-reviewed scientific research at national meetings. Physician, podiatrist or dentist who has responsibility for a complex group or organization that has agency-wide or nationwide impact. Growing body of published and presented original peer-reviewed scientific research at national and international meetings. Recognized by receipt of national and international awards.

The amount of Market Pay and the appropriate pay table and tier level for a particular physician is recommended by the ICO Director and the ICO Standing Committee, through the

NCCP, to the approving official. The determination of the amount of Market Pay of a particular physician shall take into consideration:

- The physician’s level of experience in the specialty or assignment;
- The need for the physician’s specialty or assignment;
- The appropriate health care labor market for the physician’s specialty or assignment;
- The physician’s board certifications, if any;
- The physician’s accomplishments in the specialty or assignment; and
- Consideration of unique circumstances, qualifications, or credentials, if any, and the comparison of these circumstances to the equivalent compensation level of non-HHS physicians in the local health care labor market.

## F. References

3 United States Code (U.S.C.) § 102: [https://uscode.house.gov/view.xhtml?req=\(title:3 section:102 edition:prelim\) OR \(granuleid:USC-prelim-title3-section102\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:3 section:102 edition:prelim) OR (granuleid:USC-prelim-title3-section102)&f=treesort&edition=prelim&num=0&jumpTo=true)

5 U.S.C. § 5371 (Law-Health Care Positions):

[https://uscode.house.gov/view.xhtml?req=\(title:5 section:5371 edition:prelim\) OR \(granuleid:USC-prelim-title5-section5371\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:5 section:5371 edition:prelim) OR (granuleid:USC-prelim-title5-section5371)&f=treesort&edition=prelim&num=0&jumpTo=true)

38 U.S.C., Chapter 74 (Law-Veterans’ Health Administration – Personnel):

<https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title38-chapter74&saved=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGl0bGUzOC1jaGFwdGVyNzQtZnJvbnQ%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim>

42 U.S.C. § 282 (b) (22) (Law-Director of National Institutes of Health):

[https://uscode.house.gov/view.xhtml?req=\(title:42 section:282 edition:prelim\) OR \(granuleid:USC-prelim-title42-section282\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:42 section:282 edition:prelim) OR (granuleid:USC-prelim-title42-section282)&f=treesort&edition=prelim&num=0&jumpTo=true)

U.S. Office of Personnel Management (OPM) Title 38 Delegation Agreement, dated June 28, 2022:

<https://hr.nih.gov/sites/default/files/public/documents/benefits/pay/title-38-pay/pdf/title38delegationagreement.pdf>

HHS Instruction 590-1, Title 38 Physician and Dentist Pay (PDP), dated December 17, 2021: <https://www.hhs.gov/about/agencies/asa/ohr/hr-library/590-1/index.html>

NIH Delegations of Authority, HR: Pay, No. 20, Title 38 – Physician and Dentist Pay System (PDP): <https://delegations.nih.gov/DOADetails.aspx?id=3017>

NIH Title 42 - Title 38 PDP Alignment Provisions:

<https://ohr.od.nih.gov/intrahr/Documents/title38/T-42-T-38AlignmentProvisions.pdf>

Standard Operating Procedures – Requesting Title 38 Physician and Dentist Pay:

<https://ohr.od.nih.gov/intrahr/Documents/title38/SOP-RequestingTitle38PDP.docx>

NIH Manual Chapter 1743, Managing Federal Records:

<https://policymanual.nih.gov/1743>

## G. Definitions

**Title 38:** Refers to the pay authority to attract and retain health care professionals that covers almost half of the Department of Veteran's Affairs employees. Pursuant to 5 U.S.C. § 5371, OPM has delegated to HHS the authority to use the pay authorities contained in 38 U.S.C. Chapter 74 (Law- Veterans' Health Administration Personnel)

**Title 42:** Term commonly used at the NIH to reference specific Title 42 appointing authorities, [42 U.S.C. § 209\(f\) and \(g\)](#). Title 42 is a hiring mechanism that allows the NIH to attract and retain scientists and clinicians.

**Title 5:** Refers to appointments in the competitive civil service system in accordance with [5 U.S.C. § 2102](#). Employees under this system are typically paid under the General Schedule (GS). Scientists receiving Title 38 PDP are appointed under Title 5 and assigned to a grade in the GS.

**Annual Pay:** The sum of the General Schedule (GS) base pay and Market Pay. Annual Pay is basic pay for purposes of determining civil service retirement benefits, lump sum annual leave payments, life insurance, thrift savings plan, work injury compensation claims, severance pay, recruitment, relocation and retention incentives, continuation of pay, and advances in pay.

**General Schedule base pay:** The GS pay system has 15 grades, each with ten step rates, and positions are classified into a GS grade based on the level of difficulty, responsibility, and qualifications required. GS base pay does not include any locality-based payment.

**Intramural Professional Designation (IPD):** Identifies and groups intramural positions with duties and responsibilities of similar scope and complexity that require similar levels of professional credentials and accomplishment. IPDs attach to the individual scientist, not to a position. A scientist may have an organizational title reflecting their position in the organization (e.g., Chief, ABC Branch, Division of Intramural Research, IC), in addition to an IPD. The Office of Intramural Research (OIR), NIH establishes intramural peer review policies and processes for assigning IPDs. Official titles for GS positions must comply with the OPM classification requirements (e.g., physician, podiatrist, dentist).

**Extramural Professional Designation (EPD):** Identifies and groups extramural positions with duties and responsibilities of similar scope and complexity that require similar levels of professional credentials and accomplishment. EPDs attach to an extramural position, not to an individual scientist. A scientist may have an organizational title reflecting their position in the organization (e.g., Chief, ABC Branch, Division of Extramural Research, IC), in addition to an EPD. The Extramural Title 42(f) Committee, managed by the Office of Extramural Research (OER), establishes the policies and practices regarding EPDs. Official titles for GS positions must comply with the OPM classification requirements (e.g., physician, podiatrist,

dentist).

**Market Pay:** A component of Annual Pay intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician.

**Peer Review:** The evaluation of a scientist's professional qualifications based on pre-determined criteria. The processes are managed by the OIR and OER at the NIH. Peer review is always required for EPDs and Title 42(f) IPDs to determine the professional designation of the scientist.

## **H. Alignment between Title 42 and Title 38 PDP**

In addition to the legal and HHS requirements regarding the Title 38 PDP program at NIH, the NIH has established policies and procedures to align the compensation and peer review of physicians who are paid under Title 38 PDP with those who are paid under Title 42(f).

### **1. Intramural and Extramural Professional Designations**

IPDs and EPDs must be assigned to physicians who receive Title 38 PDP who are performing the same or similar work as their Title 42(f) colleagues. Although the official titles of physicians who receive Title 38 PDP must comply with the OPM classification and titling requirements (e.g., physician, podiatrist or dentist), OIR, OER and OHR maintain records of their IPDs to facilitate internal comparisons and application of the Title 42/Title 38 PDP Alignment Provisions.

Scientists with a professional designation that is covered by Title 42(g), according to NIH Title 42 policy, must be appointed and compensated under Title 42(g). Title 5/Title 38 PDP may not be used for scientists with Title 42(g) IPDs.

An extramural position that is not designated as Title 42(f) by the Extramural Title 42 Committee (ETFC) is by default a Title 5 position. If an ICO proposes to fill the position under Title 5/Title 38 PDP, then Annual Pay cannot exceed the Washington-Baltimore-Arlington (DCB) rate for GS-15, step 10 plus the equivalent of the maximum PCA.

### **2. Peer Review**

Physicians proposed for designation in a particular IPD or EPD must undergo the same NIH peer review processes, as determined by OIR and OER, whether they are appointed and paid under Title 42(f) or under Title 5/Title 38 PDP.

### **3. Initial Pay Setting in Title 38 PDP**

Title 38 Annual Pay must be set in accordance with Title 38 pay rules as well as with the Title 42 – Title 38 PDP Alignment Provisions. When appointing a physician under Title 5/Title 38 PDP, Annual Pay must be set within the appropriate Title 38 PDP Pay Table and Tier for the medical specialty or the Title 42(f) pay maximum for the assigned EPD/IPD, *whichever is lower*. When an extramural position is not designated

as Title 42(f) by the ETFC, then Annual Pay cannot be set at the rate that exceeds the rate for GS-15, step 10 plus the equivalent of the maximum PCA. (In all cases, annual pay must be set at least at the minimum of the assigned Title 38 table and tier.)

Title 38 (Intramural)	Title 38 (Extramural)	Title 5 Position
Pay set within Title 38 Pay Tables / Tiers	Pay set within Title 38 Pay Tables / Tiers	Pay <= GS-15/10 + PCA Maximum (\$30,000)
Pay set within the NIH Title 42 Pay Model IPD pay bands	Pay set within the NIH Title 42 Pay Model EPD pay bands	

4. Performance-Based Increases in the Title 38 PDP

Market Pay increases must adhere to Title 38 pay rules as well as the Title 42 - Title 38 PDP Alignment Provisions. Physicians may receive increases to the Title 5 portion of their pay (comparability adjustments, within-grade increases, and quality step increases) without a corresponding reduction in market pay.

- a. Non-Promotion Based Increases – A pay increase is possible but Annual Pay cannot exceed the Title 38 PDP Table and Tier maximum or the Title 42 (f) pay maximum for the assigned EPD/IPD, whichever is lower. The increase must also adhere to the percentage limitations in the Title 42 – Title 38 PDP Alignment Provisions.
- b. Promotion-Based increases – A pay increase is possible but Annual Pay cannot exceed the Title 38 PDP Table and Tier maximum for medical specialty or the Title 42(f) pay maximum for the assigned EPD/IPD, whichever is lower. Promotion based increases do not have a percentage limitation. Promotions include increases to the GS grade (which must comply with Title 5 competitive hiring rules), a change in EPD/IPD, or selection for a different position with higher level duties and a broader scope of responsibilities.

5. Movement between Pay Systems

NIH has requirements in place that govern pay upon movement between pay systems, including between Title 42 and Title 5/Title 38 PDP.

- a. Physicians converting from Title 5 (e.g., Title 5, Title 5 with PCA) to Title 5/Title 38 PDP, or moving within Title 38 PDP:
  - 1. Same position/same GS grade – No increase in total compensation is possible, provided that the compensation is within the applicable VA range.
  - 2. Different position/same GS grade – A pay increase may be possible but is limited to the Title 38 Table/Tier or Title 42 IPD/EPD maximum, whichever is lower. If the new position requires higher level duties and a

broader scope of responsibilities as determined by the NCCP, the increase may be considered promotion-based and a pay increase may be possible consistent with section H.4. above.

3. Higher GS grade – This is considered a promotion and a pay increase is possible consistent with section H.4. above.
- b. Physicians converting from a non-Title 5 pay system (e.g., Title 42, Commissioned Corps, Senior Biomedical Research and Biomedical Product Assessment Service) to Title 5/Title 38 PDP:
1. Same position – No increase in total compensation is possible.
  2. Different position – A pay increase may be possible but is limited to the Title 38 Table/Tier or Title 42 IPD/EPD maximum, whichever is lower. If the new position requires higher level duties and a broader scope of responsibilities as determined by the NCCP, the increase may be considered promotion-based and a pay increase may be possible consistent with section H.4. above.
  3. Change in IPD or EPD – This change is considered a promotion and a pay increase is possible consistent with section H.4. above.