

NIH POLICY MANUAL

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

**Issuing Office: Office of the Director, Office of Human Resources (OHR),
Special Programs Branch, (301) 496-0377**

Release Date: 02/27/08

1. **Explanation of Material Submitted:** This revised chapter outlines NIH policy and procedures for the payment of Title 38 Physician and Dentist Pay (PDP) to NIH physicians and dentists.

2. **Filing Instructions:**

Remove: 2300-590-1 – Title 38 Physician Special Pay, dated 05/04/00

Insert: 2300-590-1 – Title 38 Physician and Dentist Pay, dated 02/27/08

PLEASE NOTE:

- For questions on this chapter, contact the NIH OHR, Special Programs Branch, at (301) 496-0377.
- NIH Manual System, contact the Division of Management Support, Office of Management Assessment, OM, NIH, on (301) 496-4606, or enter this URL:
<http://www1.od.nih.gov/oma/manualchapters>.

A. Purpose:

This issuance describes policies and procedures for the payment of Title 38 Physician and Dentist Pay (PDP) to NIH physicians and dentists (hereinafter referred to collectively as “physicians”). This document is based on the U. S. Office of Personnel Management Title 38 Delegation Agreement, dated April 2006, and must be used in conjunction with HHS Instruction 590-1, Title 38 Physician and Dentist Pay, dated July 2007, available on the web at <http://www.hhs.gov/ohr/manual/590-1.pdf>, and the NIH Human Resources Delegation of Authority, entitled “Title 38 – Physician and Dentist Pay System (PDP)” and located in the NIH Delegations of Authority (DOA) Database at <http://delegations.od.nih.gov/DOADetails.aspx?id=3017>.

B. Policy:

This instruction, in conjunction with HHS Instruction 590-1, Title 38 Physician and Dentist

Pay (PDP), issued July 2007, implements the “Department of Veterans Affairs (VA) Health Care Personnel Enhancement Act of 2004” (Public Law 108-445, dated December 3, 2004) as it relates to pay for physicians and dentists. The Act amends Title 38, United States Code, to simplify and improve the previous Physicians Special Pay (PSP) provisions for physicians and dentists. By mutual agreement, the U.S. Office of Personnel Management (OPM) delegated this authority to the Secretary, Department of Health and Human Services (HHS), to establish this system consisting of two pay components: 1) General Schedule (GS) base pay, and 2) market pay. Under the authority of Sections 1104 and 5371 of Title 5, United States Code, the HHS is, thereby, authorized to exercise certain personnel authorities for health care occupation positions covered by Chapter 51 of Title 5, United States Code (and exclusive of the Senior Executive Service), that provide direct patient-care services or services incident to patient-care services.

PDP is a pay authority to recruit and retain highly qualified physicians. It is within the NIH Director’s purview to establish sub-categories of eligible physicians for PDP, currently extended to clinical physicians and dentists. The NIH Director may choose to extend eligibility to other sub-categories of physicians and dentists at some point in the future.

C. Coverage:

The following two categories of NIH physicians appointed in Title 5 are eligible for PDP (see <http://delegations.od.nih.gov/DOADetails.aspx?id=3017>, entitled “Title 38 – Physician and Dentist Pay System (PDP)”):

1. Physicians who provide direct patient care or services incident to patient care. These physicians see patients on a regular basis (at least 10 percent of official time) as part of:
 - a. An active research protocol, i.e., one that is currently accruing patients and working toward a defined objective; or
 - b. The management of clinical research or service programs requiring clinical skills.
2. Physicians who oversee large interventional clinical trials, i.e., trials that have or anticipate having enrollment of 1,000 patients or more. These physicians:
 - a. are licensed or have obtained a waiver of licensure;

- b. spend at least 10 percent of official time in direct involvement in the clinical trial; and

- c. are medically responsible for the clinical trial. Medical responsibility may be evidenced by a combination of some or all of the following:
 - determining the size of the trial;

 - deciding eligibility or exclusion on individual patients, and admitting patients;

 - monitoring progress reports;

 - evaluating adverse events;

 - directing changes in the trial, including its termination;

 - formulating and interpreting medical policies;

 - determining subsequent actions with respect to medicines/vaccines/future treatment protocols; and

 - exercising regulatory responsibility for the conduct of the trial, etc.

In addition to the above, for physicians in the intramural programs, the NIH Office of Intramural Research (OIR) governs the circumstances when Title 38 and Title 5 may

be appropriately used for certain professional designations. Please refer to the (OIR) sourcebook for those cases when exceptions may be requested.

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

D. Exclusions:

Physicians who are:

1. Currently serving in the PHS Commissioned Corps;
2. Serving in an internship or residency training program;
3. Reemployed annuitants;
4. In the Senior Executive Service (SES), Executive Schedule (ES), Senior Level/Scientific (SL/ST), Senior Biomedical Research Service (SBRS), Executive Level (EL), or other senior-level systems;
5. Receiving Physicians' Comparability Allowance (PCA) under 5 U.S.C 5948
6. Employed or paid under Title 42 authority;
7. Employees serving on intermittent work schedules.

Physicians whose primary role is to manage portfolios of grants, to perform basic research, or develop drugs and devices without being involved in direct patient care or the oversight of large interventional clinical trials are excluded.

EXCLUSIONS (see <http://delegations.od.nih.gov/DOADetails.aspx?id=3017> , entitled

“Title 38 – Physician and Dentist Pay System (PDP)”).

E. Setting Pay:

Payment of PDP is discretionary and is used for recruitment and retention purposes to help provide comparability with the current labor market.

1. **Annual pay** consists of two components:
 - a. **GS Base Pay (Title 5)** - General Schedule rate for the grade and step based on the position classification. Pay-setting upon initial appointment above step 1 of the grade is based on consideration of appropriate factors warranting an appointment above-the-minimum. 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.
 - b. **Market Pay (Title 38)** – A component of pay intended to enhance the recruitment and retention for the specialty or assignment of a particular NIH physician or dentist.
2. **Total Compensation** is the sum of all payments made to a physician and dentist. This includes base pay; market pay; recruitment, relocation, and retention incentives; performance awards; or other cash awards, etc. (See [NIH Manual 2300-451-1](#) and [NIH Manual 2300-575-1](#).) Currently (i.e., Calendar Year 2008), it is restricted within the NIH’s delegated authority to \$250,000 per annum.

F. Compensation Limits:

1. **Aggregate Pay** – Total compensation payments (exclusive of lump sum annual leave, travel reimbursements, back pay, and severance pay) to physicians receiving PDP under Title 38 authority, and other supplemental pay under Title 5 during a calendar year cannot exceed the amount of annual pay received by the President of the United States (currently \$400,000) as specified in Section 102 of Title 3.
2. **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. However, they are not eligible to concurrently receive a Physicians' Comparability Allowance. (See NIH Manual 2300-595-1.) The sum of General Schedule base pay plus discretionary pay components paid to a physician under Title 5 authority is limited on an annual basis to the rate of pay for

Executive Level 1 (EX-1).

G. Equity:

The NIH Clinical Compensation Panel (NCCP), a work group of the NIH Compensation Committee (NCC), is responsible for PDP Program oversight and guidance, and will ensure consistency and appropriateness in pay setting. The NCCP will:

1. Recommend to the approving official the appropriate Pay Table, Tier Level, and Annual Pay, based upon clinical specialty, for physicians and dentists and;

2. Evaluate the Annual Pay and Tier Level of each physician at least once every 24 months.

H. Setting Discretionary Pay:

Market Pay is intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician or dentist. At least once every two years, the Secretary, Department of Veterans Affairs, prescribes nationwide minimum and maximum amounts of annual pay (base pay plus market pay) that will be paid. The Secretary may prescribe different 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.

The NIH tier definitions are:

Tier 1	Non-supervisory Physician/Dentist providing patient care services in support of biomedical research.
Tier 2	Supervisory or Program Manager Physician/Dentist functions as a fully credentialed, fully trained clinician with patient care responsibility.
Tier 3	Physician/Dentist with independent resources (personnel, budget and space) who provides patient-related activities. Publishes and presents original peer-reviewed scientific research at national meetings.
Tier 4	Physician or Dentist that has responsibility for a complex group or organization that has agency-wide or nation-wide 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 appropriate pay table and tier level for a particular physician or dentist is recommended by the IC Director and the IC Standing Committee, through the NCCP, to the approving official. The determination of the amount of market pay of a particular physician or dentist shall take into consideration:

1. Recruitment and retention needs for the specialty or assignment;
2. Level of experience in the specialty or assignment;
3. Board Certifications;
4. Healthcare labor market for the specialty or assignment; and
5. Other unique qualifications of the individual physician or dentist.

I. Delegations of Authority:

Refer to HHS Instruction 590-1, Title 38 Physician and Dentist Pay, dated July 2007, available on the web at <http://www.hhs.gov/ohr/manual/590-1.pdf>, and the NIH Human Resources Delegations of Authority, entitled “Title 38 – Physician and Dentist Pay System (PDP)” and located in the NIH Delegations of Authority (DOA) Database at: <http://delegations.od.nih.gov/DOADetails.aspx?id=3017>.

J. Documentation Required:

1. Memorandum of Recommendation, reviewed by the IC Standing Committee and endorsed by the IC Director, addressing:
 - Nature of Action: Type of action proposed – Request for Title 38 Physician and Dentist Pay or Market Pay Adjustment, etc.
 - Position Information: Description of duties, responsibilities and challenges of the NIH position that define placement in Title 38, the appropriate Pay Table and Tier Level
 - Market Pay Justification:

- a. Address the appropriate eligibility criteria - Refer to C: Coverage (above);
 - b. Include a justification of the market pay amount referring to considerations in H: Setting Discretionary Pay (above).
2. Current Curriculum Vitae and Bibliography;
 3. Organizational Chart(s);
 4. Classified Position Description (signed OF-8) with 10 percent patient care statement (as described in Section C, # 1 and # 2); and
 5. [HHS-691](#) (Rev 10/06) - Request for Title 38 Physician and Dentist Pay

K. Procedures:

All proposed Title 38 pay requests must be reviewed by the NCCP and approved by the delegated authority. Requests should be submitted through one of the branches within the Client Services Division (CSD), through Director/Deputy Director, CSD, to the Special Programs Branch (SPB), OHR, in Building 31, Room 1C39. Requests are reviewed on an ad hoc basis. An approval letter will be forwarded from the NCCP Executive Secretary to the IC Director, with copies to the CSD Branch Chief, following the response from the approving official.

L. Annuity Calculations:

Physician and Dentist Pay under Title 38 shall be fully creditable for purposes of computing benefits, including retirement benefits, annual leave benefits, life insurance, Thrift Savings Plan, etc.

M. Records Retention and Disposal: All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of [NIH Manual Chapter 1743](#),

M-1.

NIH e-mail messages (messages, including attachments that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. If necessary, back up file capability should be created for this purpose. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of the Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

N. Management Controls:

1. **Office Responsible for Reviewing Management Controls Relative to this Chapter:**

The purpose of this manual issuance is to provide policies and procedures for the payment of Title 38 Physician and Dentist Pay, and to ensure that PDP is conducted in full accordance with statutory, regulatory, and policy requirements. The Office responsible for reviewing management controls relative to this Chapter is the Special Programs Branch (SPB), Office of Human Resources (OHR), Office of the Director, NIH. Through this issuance, the OHR is accountable for the method used to ensure that management controls are implemented and working.

2. **Frequency of Review:** On-going review of IC compliance with this chapter.

3. **Method of Review:** On-going SPB review of cases submitted by the ICs and submission of quarterly reports to the NCCP.

4. **Review Reports** are sent to: Reports are sent to the Deputy Director for Management (DDM), Deputy Director for Extramural Research (DDER), Deputy Director for Intramural Research (DDIR), and Director of Human Resources, NIH. Reports should indicate that controls are in place and working well or indicate any internal

management control issues that should be brought to the attention of the report recipient(s).