



National Capital Region
Medical Directorate
ADMINISTRATIVE INSTRUCTION



NUMBER 1400.07

JAN 21 2015

Change 2, Effective November 7, 2016

PERS

SUBJECT: Title 38 Premium Pay Eligibility and Coverage

References: See Enclosure 1

1. **PURPOSE.** This Administrative Instruction (AI), based on the authority of References (a) through (d) and in accordance with (IAW) References (e) through (k), establishes the policy and requirements for payment of Title 38 Premium pay for certain healthcare professionals listed at Enclosure 2.

2. **APPLICABILITY.** This AI applies to the National Capital Region Medical Directorate (NCR MD), Walter Reed National Military Medical Center to include the DiLorenzo Clinic and the Tri-Service Dental Clinic, Fort Belvoir Community Hospital to include the Dumfries and Fairfax Clinics, and the Joint Pathology Center. Hereafter, these facilities are collectively referred to as Joint Medical Treatment Facilities (MTFs) and Centers.

3. **POLICY.** It is NCR MD policy, IAW References (f) through (k), that:

a. Employees in the occupations outlined in Enclosure 2 are eligible to receive Title 38 premium pay when providing direct patient care services or service incident to direct patient care.

b. The Joint MTF or Center may terminate additional pay authorized for any nurse or other healthcare professional pursuant to the AI when such pay is no longer necessary to meet recruitment or retention needs. Such termination is not an adverse action. However, an affected employee must be notified of the intent to terminate the use of this additional pay authority as soon as practicable before the use of the authority is terminated.

4. **RESPONSIBILITIES**

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a. Director, NCR MD. The decision to approve the use of this additional pay authority for a category of nurse or other healthcare professional must be coordinated with the Director(s) of all other Federal healthcare facilities in the local area to ensure that all Federal nurses or other healthcare professionals in similar situations are treated in the same manner. Where there are differences in staffing situations, equal compensation is not necessarily appropriate.

b. Director, Joint MTF or Center. The Director of a Joint MTF or Center its equivalent shall ensure that all affected nurses or other healthcare professionals are granted additional pay on a fair and equitable basis.

c. Supervisors and Managers. Supervisors and Managers will:

(1) Follow all existing rules, regulations, policies, and procedures on assigning, and authorizing work that results in payment of Premium pay. They may limit the number and occupations of employees authorized to receive such payments when this can be done without mission disruptions.

(2) Appropriately code and certify employee timecards signifying that Title 38 Premium pay is to be paid for the date(s) and hours(s) indicated when an employee (in the occupations outlined at Enclosure 2) performs duties involving direct patient care, or care consequential of direct patient care, and they perform such duties under one of the conditions outlined in Enclosure 3.

d. Chief, NCR MD Personnel Branch. The Chief, NCR MD Personnel Branch will monitor the state of Title 38 Premium pay and will provide NCR MD guidance and direction as necessary to ensure policy intent is met.

e. Director, Civilian Human Resources Center (CHRC). The Director, CHRC will ensure that all employee records in the targeted twenty-five occupations are properly coded as eligible for Title 38 premium pay in the Defense Civilian Personnel Data System and will provide managers and supervisors with necessary refresher training and/or information on the requirements of payment of Premium pay under both Title 38 and Title 5 (References (i) and (j)).

5. PROCEDURES. See Enclosure 3.

6. RELEASABILITY. **Cleared for public release**. This AI is approved for public release and is available on the Internet from the NCR MD Website at www.capmed.mil.

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7. EFFECTIVE DATE. This AI:

- a. Is effective immediately.
- b. Will expire 10 years from the publication date if it hasn't been reissued or cancelled before this date in accordance with DoD Instruction 5025.01 (Reference (e)).



R. C. BONO
RADM, MC, USN
Director

Enclosures

1. References
2. Occupations Eligible for Payment of Title 38 Premium Pay
3. Procedures

Glossary

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ENCLOSURE 1REFERENCES

- (a) Deputy Secretary of Defense Action Memorandum, "Implementation of Military Health System Governance Reform," March 11, 2013
- (b) DoD Directive 5136.13, "Defense Health Agency (DHA)," September 30, 2013
- (c) National Capital Region Medical Directorate (NCR MD) Concept of Operations, September 10, 2013
- (d) Office of the Assistant Secretary of Defense Health Affairs Memorandum, "Legal Effect of Joint Task Force Guidance after October 1, 2013," October 4, 2013
- (e) Joint Task Force National Capital Region Medical Instruction 5025.01, "Formats and Procedures for the Development and Publication of Issuances," March 5, 2012
- (f) DoD Instruction 1400.25, "DoD Civilian Personnel Management System," December 3, 1996
- (g) DoD Instruction 1400.25, Volume 540, "DoD Civilian Personnel Management System: Pay Pursuant to Title 38 -- Additional Pay for Certain Healthcare Professionals," December 1996 as amended
- (h) DoD Instruction 1400.25, Volume 542, "DoD Civilian Personnel Management System: Pay Pursuant to Title 38 - On-call Pay," December 1996 as amended
- (i) Sections 7453, 7454, 7455, and 7456 of Title 38, United States Code
- (j) Sections 1104, 5304, 5305, 5371, 5542 and 5547 and Chapter 55 of Title 5, United States Code
- (k) Delegation Agreements between Office of Personnel Management and Department of Defense, "Use of Certain Personnel Authorities for Healthcare Occupations," current edition¹

¹ Available on the Civilian Personnel Management Service website at www.cpms.osd.mil/fas/classification/pay_policy_memos.asp

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ENCLOSURE 2GENREAL SCHEDULE (GS) OCCUPATIONS ELIGIBLE FOR PAYMENT OF TITLE 38
PREMIUM PAY

| | | | | |
|--------|--|--|----------------------------|---|
| GS-180 | Clinical Psychologist | | GS-648 | Therapeutic Radiologic Technologist |
| GS-185 | Social Worker | | GS-649 | Medical Instrument Technician |
| GS-603 | Physician Assistant | | GS-651 | Respiratory Therapist |
| GS-610 | Registered Nurse | | GS-660 | Pharmacist |
| GS-620 | Licensed Practical Nurse | | GS-661 | Pharmacy Technician |
| GS-630 | Dietitian | | GS-665 | Audiologist/Speech Pathologist |
| GS-631 | Occupational Therapist | | GS-667 | Prosthetist/Orthotist |
| GS-633 | Physical Therapist | | GS-669 | Medical Records Administration |
| GS-636 | Rehabilitation Therapy Assistant (Physical Therapy Assistant) (Occupational Therapy Assistant) | | GS-675 | Medical Records Technician |
| GS-642 | Nuclear Medicine Technician | | GS-681 GS-682 GS-683 | Expanded Function Dental Auxiliaries: Dental Assistant Dental Hygienist Dental Laboratory Technician |
| GS-644 | Medical Technologist | | GS-858 | Biomedical Engineer |
| GS-647 | Diagnostic Radiologic Technologist | | BLANK | BLANK |

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ENCLOSURE 3PROCEDURES

The following categories further describe the types of premium pay. Refer to References (g) and (h), and local timekeeping and/or similar guidance for additional information.

1. ON-CALL PAY

a. An employee officially scheduled to be on-call outside normal duty hours shall be paid 10% of his or her applicable overtime rate for each hour of on-call duty ~~additional hourly premium of 15% of his/her hourly rate of basic pay for each hour in which the employee is officially in an on-call~~ status outside the facility.

b. An employee on official Title 38 On-Call status must remain within the designated commuting distance, must remain fit for duty, and must be prepared to return to the place of work immediately upon notification to do so.

c. The Joint MTF or Center Director, without further delegation, must designate in writing which work units may use On-Call procedures for the civilian workforce. Within that work unit, the supervisor or department head may determine which employees may be scheduled for On-Call duty. An employee should not be scheduled to be On-Call unless it is essential for such an employee to be immediately available to return to duty.

d. If called back to work, On-Call ends and regular or overtime pay starts. Once the work is finished, the employee returns to On-Call status. Regardless of the duration of work, the time spent at work is deemed to be at least 2 hours for pay purposes.

2. WEEKEND DUTY PAY

a. Weekend duty pay is an additional 25% of the employee's hourly rate of basic pay for all hours of a tour of duty if any part of the tour falls between midnight Friday and midnight Sunday.

b. An employee can receive weekend premium pay for two separate tours of duty. For example, if a nurse works from 2200 Friday to 0600 Saturday, and then from 2200 Sunday to 0600 Monday, all 16 hours shall be paid at the weekend premium rate.

3. TOUR DIFFERENTIAL (NIGHT DUTY)

a. An eligible employee may receive an additional 10% of his/her hourly rate of basic pay for each hour in a tour of duty in which a minimum of 4 hours of that tour of duty falls between 1800 and 0600.

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b. If there are less than 4 hours between 1800 and 0600, the employee shall be paid additional pay for each hour of work performed between 1800 and 0600.

4. HOLIDAY PAY. Holiday pay is 100% of the employee's hourly rate of basic pay for hours of work performed on the holiday (0001 – 2400). Also, if an employee works overtime on a holiday, he/she shall be paid at the Holiday rate and not the overtime rate.

5. OVERTIME PAY. Title 38 overtime is 50% of the employee's hourly rate of basic pay, regardless of pay grade. The employee receives overtime rate for official work in excess of 40 hours in an administrative work week; more than 8 hours in a day; or in excess of an employee's established and approved alternative work schedule.

6. GENERAL TITLE 38 PREMIUM PAY RULES

a. Title 38 premium pay is based on an hourly rate of basic pay derived by dividing the employee's annual basic pay by 2,080 hours and rounded to the nearest whole cent, counting half cent and over as a whole cent.

b. For purposes of Title 38 premium pay calculations, an employee's rate of basic pay includes the basic pay supplement due to locality pay or special salary rate, whichever applies.

c. A covered employee on an official alternate work schedule shall receive overtime pay for hours of officially ordered and approved work in excess of their regularly scheduled tour of duty.

d. The bi-weekly and annual limitations on premium pay under Title 5 do not apply to employees covered by this Title 38 authority.

e. Title 38 premium pay is not considered basic pay for benefits purposes.

f. An eligible employee may request in writing and be granted compensatory time off in lieu of overtime pay, but they may not be required to accept compensatory time. This provision regarding compensatory time does not apply to intermittent employees.

g. Eligible employees can receive more than one type of premium pay for the same period of service. Under these circumstances, the amounts are calculated separately.

h. Work units in which shift work is performed shall ensure schedules are developed and monitored for the most effective use of Title 38 premium pay rules to ensure a consistent application of the rules and scheduling. Schedules must provide payroll/time and attendance with all the necessary information required to ensure accurate documentation of hours worked.

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7. **RECORD-KEEPING REQUIREMENTS.** The Director of a medical or dental treatment facility or its equivalent and the affected Director of Personnel shall keep adequate records to evaluate the use of this authority as required by the Assistant Secretary of Defense for Health Affairs. Such records shall include:

- a. How the authority is used by the facility;
- b. The location of the facility;
- c. The type of occupations covered; and
- d. Any other pertinent data that may be required to evaluate the overall use of the authority by the DoD and Office of Personnel Management.

Table. Summary of pay differentials between Title 38 Premium Pay and Title 5.

| Premium Pay | Hourly Rate of Base Pay Additive* | Title 38 Rules | Title 5 Rules |
|---|--|--|---|
| On-Call Pay | 15% | Premium for all hours on-call | No equivalent |
| Weekend Duty Pay | 25% | Premium pay for all hours in tour of duty if any part of tour between 2400 Friday and 2400 Sunday | Premium only for actual hours worked on Sunday |
| Tour Differential (Night Duty) | 10% | Premium pay for all hours in tour of duty between 1800-0600 if at least 4 hours of tour between 1800 and 0600, otherwise same as Title 5 | Only actual hours worked between 1800-0600 |
| Holiday Pay | 100% | Premium pay hours worked on holiday. Overtime at holiday rate | Same as Title 38 except Holiday overtime at overtime rate |
| Overtime pay | 50% | Overtime rate based on actual rate of basic pay (no cap) | Overtime rate capped at GS-10, step 1 |
| *Other than On-Call pay, percentages are identical to Title 5. The difference is rule application, described above. | | | |

GLOSSARY

ABBREVIATIONS AND ACRONYMS

| | |
|--------|---|
| AI | Administrative Instruction |
| CHRC | Civilian Human Resource Center |
| GS | General Schedule |
| IAW | in accordance with |
| MTF(s) | Medical Treatment Facility/Facilities |
| NCR MD | National Capital Region Medical Directorate |