

## **United States Code Title 38, Chapter 74**

### **Frequently Asked Questions**

#### **1. What is Title 38 and how does it affect nurses in other health care agencies like the VA?**

- a. Title 38 is the portion of the United States Code that primarily governs the benefits and services provided to veterans. Chapter 74 of Title 38 includes provisions related to personnel policies for personnel, including nurses, employed by the Veterans Administration. Under Title 38, nurses employed by the VA are governed by a unique personnel system with appointments, promotions, qualifications, work schedules, and grade increases that are different from other standard federal employment rules under Title 5. Under Title 38, nurses are often on a different pay scale system with different wage grades and the potential for performance-based increases or special salary rates, reflecting the specialized skills and demands of health care services.
- b. Per section 1599c of Title 10 of the United States Code, the Secretary of Defense may exercise any authority for the appointment and pay of health care personnel under chapter 74 of Title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the DoD if the Secretary determines that the exercise of such authority is necessary in order to provide or enhance the capacity of the Department to provide care and treatment for members of the armed forces who are wounded or injured on active duty in the armed forces and to support the ongoing patient care and medical readiness, education, and training requirements of the DoD.

#### **2. We've been hearing about Title 38 for years. What is the timeline for transition to Title 38?**

- a. DoD is exploring the potential for implementing Title 38 and is in the process of developing a draft implementation plan to manage the potential transition of eligible employees to Title 38. If implementation is authorized, the implementation plan will take a phased approach to prioritize the conversion of registered nurses and licensed practical nurses to Title 38. Transition of remaining eligible health care occupations will be explored as well. If the implementation plan is approved, the specific timeline for transition to Title 38 will be communicated to all impacted stakeholders.

#### **3. Will all nurses transition to Title 38?**

- a. Currently, DoD is evaluating the requirements and developing an implementation plan to convert all registered nurses and licensed practical nurses to Title 38. The conversion is subject to meeting all the conditions necessary to implement Title 38. These include establishing policy and procedures, identifying, and allocating funding, updating and/or adjusting

information systems, establishing and training human resource and budget personnel on Title 38 procedures, and notifying and consulting with the Union.

**4. Will nurses have a choice of staying under Title 5 or an option for a hybrid of Title 5 and Title 38?**

- a. Both registered nurses and licensed practical nurses are eligible for conversion to the excepted service under Title 38. If converted, registered nurses would be fully governed by Title 38 and the competitive service provisions of Title 5 would no longer apply. Licensed practical nurses would also be appointed to the excepted service under Title 38 and would be categorized as hybrid Title 38 employees. This means Title 38 authorities apply regarding their appointment, qualifications, advancement, and for some elements of premium pay. All matters relating to adverse actions, reduction-in-force, Veterans preference, rights of part-time employees, hours of duty, and leave would continue to be subject to and adjudicated according to the rules under Title 5. DHA OGC is in the process of determining if the applicable law permits nurses to opt-out of conversion to Title 38.

**5. How does Title 38 impact nursing salaries and compensation compare to Title 5?**

- a. Under Title 38, nurses are often on a different pay scale system with different wage grades and the potential for performance-based increases or special salary rates, reflecting the specialized skills and demands of health care services.

**6. Will existing Special Salary Rates remain in place under Title 38?**

- a. Yes.

**7. What are the major differences between Title 38 and Title 5?**

- a. Under Title 5,
  - i. Positions are advertised and open to the general public. Applicants compete with each other under the merit system administered by OPM.
  - ii. Pay scale, adjustments, step increases, and promotions are generally standardized and occur through a structured system.
  - iii. Employees are typically subject to standardized performance appraisals which determine eligibility for promotions, bonuses, and other personnel actions.
- b. Under Title 38,
  - i. With some exceptions, formal job opportunity announcement is not required to exercise individualized recruitment efforts and hiring officials are able to seek out and respond quickly to interested candidates.

- ii. In addition to base pay, medical professionals under Title 38 are eligible for additional pay authorities (e.g., nurse locality pay) based on the labor market and the need to attract skilled healthcare professionals.
- iii. Performance evaluations can be tailored to the specific occupation, reflecting specialized competencies and achievements.

**8. How does performance management differ for nurses under Title 38 compared to Title 5?**

- a. Title 5 provides a standardized approach to performance management for the general federal workforce, emphasizing consistency, and structured evaluations. Performance management under Title 38 can be uniquely developed, tailored, and administered by DoD with flexibility to meet the unique demands and standards of each individual occupation.

**9. What are the benefits of working under Title 38 authorities for nurses in terms of career advancement and professional development opportunities?**

- a. Title 38 allows greater flexibility in developing career paths for nurses to advance in their careers. For instance, licensed practical nurses under Title 5 are limited by the OPM's professional nursing experience requirement to transition into a registered nurse. Under Title 38, unique qualifications can be established and administered by DoD to remove this barrier.

**10. Are there specific training and education requirements for nurses working under Title 38?**

- a. Section 7402 of Title 38 prescribes certain training and education requirements for nurses. This includes having successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, and be registered as a graduate nurse in a State. Additional training and education requirements may be developed and administered by DoD.

**11. How does Title 38 impact the recruitment and retention of nursing staff?**

- a. Title 38 provides specific authorities and flexibilities that aid in recruiting and retaining nursing staff. In particular, the non-competitive hiring authority under Title 38 provides DoD the ability (with some exceptions) to directly recruit and fill vacancies quickly without a formal job opportunity announcement. It also enables DoD to apply additional pay authorities, such as nurse locality pay, to increase DoD's pay parity with the VA and private sector by adjusting compensation based on geographic location, the demand for specific nursing specialties, and comparisons with the private sector.

**12. Can nurses working under Title 38 join unions and engage in collective bargaining?**

- a. Yes, appointment to Title 38 excepted service does not affect Bargaining Union Status.