

January 6, 2021

Beth Taylor, DHA RN, NEA-BC
Assistant Under Secretary for Health for Patient Care Services and Chief Nursing Officer
Veterans Health Administration
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Re: Interim Final Rule, Authority of VA Professionals to Practice Health Care

Submitted electronically via www.Regulations.gov

Dear Under Secretary Taylor:

The American Nurses Association (ANA) is pleased to comment on the interim final rule (IFR) published in the Federal Register on November 12, 2020, Authority of VA Professionals to Practice Health Care. The IFR affirms the authority of the Department of Veterans Affairs (VA) to allow nurses and other professionals to provide care in a state other than the state where they are licensed. The rule also gives notice of the VA's intention to develop national practice standards for health care delivered in all VA facilities.

VA nurses and their patients are part of a unique healthcare delivery system that serves veterans on a national basis. ANA recognizes that the VA has overall authority to administer this national system. We appreciate the clear statement of the IFR that providers employed directly by the VA, including nurses, are subject to practice oversight by the VA, as opposed to state licensing boards and other state regulations.

In light of an overall nursing shortage, compounded by the COVID-19 public health emergency, VA providers must be mobile across state lines to meet VA patient needs as determined by the VA. Further, given their unique position in a federally operated healthcare system, nurses should be able to work as directed within the scope of their employment in a federal agency, without fear of discipline by state agencies. Therefore, we support the overall intent expressed in the IFR.

More specifically, the IFR confirms that VA-employed providers may practice "consistent with the scope and requirements of their VA employment, notwithstanding *any* State license, registration, certification, or other requirements that *unduly interfere with their practice.*" (Emphasis added). The IFR further confirms the VA's authority to establish national practice standards for nurses and other provider types, in order to standardize practice across all VA medical facilities and facilitate systemwide adoption of electronic health records.

ANA agrees that these confirmations are aligned with the VA's federal regulatory authority, as cited in the IFR. However, given the range and variety of state practice rules, the IFR lacks some clarity on key points of concern to nurses and practice oversight. For instance, neither the IFR nor other VA guidance suggests what kinds of state requirements would, in the VA's view, unduly interfere with the practice of a VA-employed nurse. We are concerned that there may be circumstances where a state's interpretation of practice guidance is inconsistent with VA standards and expectations, in a way that leaves a nurse caught between two authorities, potentially risking disciplinary action that cannot be resolved expeditiously. We respectfully recommend that the VA issue regulatory or sub-regulatory guidance that defines "unduly interfere," with examples in the context of nursing practice within the VA system. Doing so will give added assurances to VA-employed nurses while providing clarity to state-based regulators as to oversight jurisdiction in particular situations.

The IFR is also vague as to the scope and level of specificity of the practice standards the VA might apply to VA-employed providers. For instance, would these be developed *de novo* by the VA, or based on an existing set of standards such as those developed and periodically updated by ANA?¹

We urge the VA to be transparent in exploring such questions about how the IFR will operate in various scenarios. The answers will have implications for VA-employed nurses, and for other nurses considering a career with the VA while engaged with state boards for licensing and certification. We also wish to emphasize that the expert voices of nursing professions must be a critical component of any strategy to develop national standards of practice for VA-employed nurses. We urge the VA to include and provide adequate resources for nursing stakeholders to participate meaningfully in development of standards for nurses and other healthcare professionals that work closely with nurses in clinical settings.

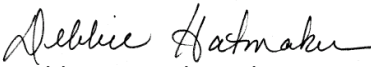
As the IFR makes clear, VA practice oversight under the IFR is limited to providers who are employed directly by the VA. As the healthcare system and workforce continue to evolve, research-based guidance on practice oversight may be needed to ensure that all VA patients receive high-quality care. We hope that the VA will consider the impacts of this IFR, over time, on care delivered by contract providers and care that VA patients access in non-VA community settings. Additional policies and guidance may be needed in these areas.

ANA is the premier organization representing the interests of the nation's 4.2 million registered nurses, through its state and constituent member associations, organizational affiliates, and individual members. ANA members also include the four advanced practice registered nurse roles (APRNs); Nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse-midwives (CNMs) and certified registered nurse anesthetists (CRNAs). ANA is dedicated to partnering with health care consumers to improve practices, policies, delivery models, outcomes, and access across the health care continuum.

¹See ANA, *Nursing: Scope and Standards of Practice*, 3rd Ed., accessible online at <https://www.nursingworld.org/nurses-books/nursing-scope-and-standards-of-practice-3rd-ed/>. Note: Fourth Edition is forthcoming.

If you have questions, please contact Brooke Trainum, JD, Assistant Director of Policy and Regulatory Advocacy, at (301) 628-5027 or brooke.trainum@ana.org.

Sincerely,


Debbie Hatmaker, PhD, RN, FAAN
Chief Nursing Officer/EVP

cc: Ernest Grant, PhD, RN, FAAN, ANA President
Loressa Cole, DNP, MBA, RN, NEA-BC, FACHE, ANA Chief Executive Officer