

MEMORANDUM OF UNDERSTANDING

The following constitutes an agreement between the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) and the American Federation of Government Employees (AFGE), AFL-CIO, and National Veterans Affairs Council # 53 (NVAC) concerning implementation of VHA Alternate Work Schedules (AWS) for Registered Nurses – VA Handbook 5011.

All the provisions of this Memorandum of Understanding must be interpreted in accordance with 38 USC 7422.

PART A: ALTERNATE WORK SCHEDULES FOR RNS

1. The parties understand that Section 4 of Public Law 108-445, codified at 38 U.S.C. § 7456A, which authorized AWS as set forth in VA Handbook 5011, applies to registered nurses appointed under Chapter 74 of Title 38, which includes Certified Registered Nurse Anesthetists and Advanced Practice Nurses.
2. The parties understand that 38 U.S.C. § 7456A authorizes the VA Secretary to establish AWS where necessary to obtain or retain the services of registered nurses at a VA health care facility.
3. All registered nurses will be trained regarding the procedures set forth in VA Handbook 5011, Part II, Chapter 3, paragraph 6h for requesting AWS. Training slides and guidance relating to these procedures are available on the Office of Human Resources Management's Worklife website at <http://vaww1.va.gov/ohrm/Worklife/Leave/AWSRN.ppt> and <http://vaww1.va.gov/ohrm/Worklife/DutyHours/AWSRN.doc>.
4. Management at the facility level will solicit and consider the local union's input regarding criteria subject to or consistent with 38 U.S.C. 7422 that may be used to implement AWS for RNs, noting potential areas to be targeted.
5. RNs will be notified of approvals and denials of AWS using VA Form 0870a, in accordance with VA Handbook 5011, Part II, Chapter 3, paragraph 6h and Appendix D thereto. Copies of the completed VA Form 0870a will be provided to the RN and, upon request, all completed VA Form 0870a forms will be forwarded to the local union representative.
6. If management at a particular facility determines that an established AWS for registered nurses should be permanently terminated on a unit-wide or facility-wide basis, based on a finding of adverse impact under VA Handbook 5011, Part II, Chapter 3, paragraph 6.e. (6), management will notify the local union and any affected nurse. Where patient care needs permit, such notice will be provided at

least fourteen (14) days prior to effecting the termination of AWS and management will explain the reasons for the termination to the local union. If a local union requests to bargain over the termination of an established AWS and submits one or more proposals that do(es) not conflict with 38 USC 7422, 38 USC 7456A, or another applicable law, rule, or regulation, negotiations will be conducted in accordance with Article 44 of the VA/AFGE Master Agreement.

7. Procedures by which employees may request to terminate or change their participation in AWS shall be as stated in the Master Agreement, Article 20, Section 2.C.2.d.

8. An RN's AWS will not be terminated from the AWS unreasonably or arbitrarily. If the union feels that the termination of a nurse's AWS was for unjust cause, the decision can be grieved utilizing the negotiated grievance procedure unless the termination concerns issues of professional conduct or competence within the meaning of 38 U.S.C. § 7422, as determined by the Under Secretary of Health.

9. In accordance with 38 U.S.C. §7456A(1)(A), a nurse working a 36/40 work schedule will work thirty-six (36) hours in a seven (7) day period but will be paid for forty (40) hours of work. These employees will be considered full-time with all the rights of a full time employee, including completion of the probationary period after two (2) years under the AWS and appeal rights. For information purposes only, these nurses will be paid premium pay in accordance with 38 U.S.C. § 7456A (b) (2) (C) and/or 38 U.S.C. § 7456A(c), as applicable.

10. When terminating an RN's AWS for unsatisfactory performance, the supervisor will notify the RN of the performance concerns and the termination of AWS in writing. If management determines that the RN's performance improves during a performance improvement period as set forth in VA Handbook 5013, Part II, paragraph 9.(e)(2), management may place the RN back on the AWS if the schedule is still available, or if not, the RN may re-apply and may be reconsidered for AWS at a later date.

PART B: LIMITATIONS ON RNS' WORK HOURS

1. For information purposes only, in accordance with Public Law 108-445, Section 4.b., and VA Handbook 5011, Part II, Chapter 3, paragraph 6 i, nurses will not provide direct patient care in excess of 12 consecutive hours, except in the case of nurses providing emergency care.

2. VHA will provide AFGE-NVAC with a copy of the annual certification to Congress required by Public Law 108-445, Section 4.b. (2).

3. Management will consider an RN's request to report to work without having twelve (12) hours off-duty between work tours.
4. When determining whether to mandate any nurse to work in a direct patient care setting in excess of twelve (12) consecutive hours in an emergency, local management may consider other resources including nurse managers, supervisors, unscheduled tours, call backs and voluntary overtime. Voluntary overtime exceeding 12 hours is overtime performed by nurses who are qualified and volunteer to work over twelve (12) hours. Management will endeavor to rotate mandatory overtime fairly and equitably.
5. If a nurse who has been mandated to work overtime in excess of (12) twelve consecutive hours feels unsafe to deliver care to patients, the RN should discuss his or her concerns with his or her supervisor in accordance with local procedures.
6. A nurse may work more than 60 hours in a seven (7) day period if the needs of the agency support this.
7. The appropriate management official shall provide a copy of this agreement to the local union president, upon receipt.

Borned M. Keiber
For the Department (VHA)

3/31/08
Date

Jane M. Nygaard
For the National VA Council # 53

3/24/08
Date