

Title 38 Decision Paper
Department of Veterans Affairs (VA)
Northern California Health Care System (VAMC)

FACTS

This matter arises from a new procedure for the Emergency Department (ED) nursing staff. On April 28, 2016, the Nurse Manager in the ED sent an email to the Registered Nurses within the ED and Primary Care Clinic (PCC) stating “starting today we will be trialing this SBAR form when sending patients from the ED to PCC.¹ After securing an appointment the triage nurse will fill out this SBAR form and give it to the patient to take to Primary Care with them. The forms are a bright orange and are highly visible. Once there they will present it to the registration clerk.” (Attachment 1).

On May 2, 2016, the American Federation of Government Employees, Local 1206 (Union or AFGE) filed a demand to bargain as the Medical Center “directly contacted nursing bargaining unit employees (BUEs) situated at Mather Emergency Department (ED) and Primary Care Clinic (PCC) regarding implementation of SBAR form. Implementation of the form will significantly change(s) [sic] prior procedures, and prior working conditions of the aforementioned BUEs.” (Attachment 1).

On May 25, 2016, the Union filed an Unfair Labor Practice Charge (ULP) with the Federal Labor Relations Authority (FLRA). (Attachment 3). The ULP asserted that Medical Center management “bypassed the Union and changed the working conditions of bargaining unit employees (BUEs) in ED and Primary Care Clinic (PCC), Mather VA” as they “unilaterally implemented the use of a new SBAR form for trial use in the ED and PCC.” *Id.*

On July 21, 2016, the Medical Center provided a response to the Union’s ULP. (Attachment 4).

On August 26, 2016, the Chief of Employee and Labor Relations (HRMS) provided the Union a follow up email from their meeting which was held on or about August 4, 2016. (Attachment 5). HRMS stated that the purpose of the SBAR form is to be used as a mechanism for the RNs at the ED to communicate with the RNs at the PCC as to “why the patient is presenting at their clinic. The SBAR is not part of the patient’s chart. It does not need to be scanned or otherwise entered into the patients record. The SBAR is discarded/destroyed once the patient has been seen at Primary Care.” *Id.*

¹ SBAR: Emergency Department (ED) Triage to Primary Care (PC) form is used by the Triage Registered Nurse to assess the patient and then provided to the patient as the patient is transferred to the Primary Care Clinic Registered Nurse (Attachment 2). SBAR is an acronym for (S) Situation (B) Background- pertinent to the situation (A) Assessment of the situation (R) Recommendation / request for the situation. *Id.*

On November 1, 2016, the Medical Center formally notified the FLRA, in response to the Union's ULP, that the Agency was invoking 38 U.S.C. § 7422 (Attachment 6).

On November 15, 2016, the FLRA notified the Medical Center and Union that the ULP was being held in abeyance pending the outcome of the 38 U.S.C. § 7422 request (Attachment 7).

On January 11, 2017, the Medical Center formally requested a 38 U.S.C. §7422 determination (Attachment 8). The Union did not submit a response.

AUTHORITY

The VA Secretary has the final authority to decide whether a matter or question concerns or arises out of professional competence (i.e., direct patient care or clinical competence), peer review, or employee compensation within the meaning of 38 U.S.C. § 7422(b). This authority is delegated within VA policy. (Attachment 9).

ISSUE

Whether the Union's ULP charge claiming that the Medical Center refused to bargain over the Medical Center's unilateral decision to implement the use of the new SBAR form by RNs in both the ED and PCC concerns direct patient care and is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b), and thereby excluded from collective bargaining.

DISCUSSION

The Department of Veterans Affairs Labor Relations Improvement Act of 1991, codified in part at 38 U.S.C. § 7422, granted collective bargaining rights to Title 38 employees under 38 U.S.C. § 7422(a). However, for Title 38 employees described in 38 U.S.C. 7421(b), collective bargaining may not cover any matter or question concerning or arising out of professional conduct or competence (i.e., direct patient care or clinical competence), peer review, or any matter or question concerning or arising from employee compensation, as determined by the Secretary. 38 U.S.C. § 7422(b). The following employees are described in 38 U.S.C. 7421(b)—physicians, dentists, podiatrist, optometrist, registered nurses, physician assistants, expanded-duty function dental auxiliaries, and chiropractors. *Id.*; see 38 U.S.C. 7401(1).

The SBAR process was devised to provide better communication between the ED and PCC, and therefore to improve patient care. When a patient presents at the Medical Center's ED, they are seen by the Triage Nurse who will then determine whether the patient needs to be seen by the PCC (Attachment 4). If the patient is deemed appropriate to be seen by the PCC and an appointment is made, the SBAR form is to be completed by the ED's Triage Nurse who will then contact the PCC's RN to inform them of the patient's transfer to the PCC. *Id.* The patient is provided the SBAR form for

presentation upon their arrival at the PCC. *Id.* Once the patient is seen in the PCC, the SBAR form is then placed in one of the shred bins located throughout the facility (Attachment 6). Triageing a patient and documenting the pertinent background information and initial assessment and communicating accurately to the Primary Care team are unquestionably an important component of direct patient care.

Similar issues involving changes to nursing procedures to improve patient care have been addressed by the Secretary. In 2015, the Long Beach Medical Center instituted a process that required a second visual verification and documentation before a nurse could administer high alert medications. The Medical Center stated that the new process “was necessary to minimize errors in administration of high alert medications, like insulin, and ‘to ensure consistent, safe, and accurate patient care.’” Monitoring and recording of dosages of high alert medications, is an important component of direct patient care. (Attachment 10, Long Beach Health Care Center, (April 15, 2015)).

In 2014, The Huntingdon Medical Center conducted multidisciplinary team rounds on a daily basis in which various teams comprised of health care disciplines to include RNs “meet as a group with patients to assess their comprehensive needs” and “collaborate to formulate short and long-term health care plans specific to each patient.” (Attachment 11, VAMC Huntingdon (January 29, 2014)). “One of the responsibilities of Intensive Care Unit (ICU) registered nurses participating on the multidisciplinary teams was to input initial and follow-up notes into the Computerized Patient Records System (CPRS), the electronic patient file. *Id.* The Union filed a demand to bargain and the “ICU RNs informed management that the ‘core issue related to the Demand to Bargain was not related to participating in the rounds, but specifically the process where the RNs would input a note into CPRS.’” *Id.* The Secretary concluded that “[C]ompleting the initial notes in CPRS and updating those notes as the patient progresses through treatment is unquestionably an important component of the patient’s care. Determinations by the Medical Center as to how much involvement ICU registered nurses will have in creating or updating the patient’s electronic treatment file is a matter concerning direct patient care and is excluded from bargaining by application of 38 U.S.C. § 7422.” *Id.*

As illustrated by the above-described decisions, the Secretary has held that RN work assignments that require documentation regarding patients, such as in this instance of the Medical Center’s use of the SBAR form for purpose of patient triage, concern direct patient care and are excluded from bargaining by the application of 38 U.S.C. § 7422.

RECOMMENDED DECISION

A ULP charge concerning the Medical Center’s decision to implement the use of the new SBAR form by RNs in both the ED and PCC without completing bargaining concerns direct patient care and is a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422(b), and thereby excluded from collective bargaining.

APPROVED _____

DISAPPROVED _____



September 6, 2022

Shereef Elnahal, M.D., MBA
Under Secretary for Health

Date