



DEPARTMENT OF VETERANS AFFAIRS
UNDER SECRETARY FOR HEALTH
WASHINGTON DC 20420

DEC 20 2007

Wanda Mims, MBA
Director (00)
VAMC Hampton
100 Emancipation Drive
Hampton, VA 23667

Sheila Elliott, Pharm.D., MBA
Vice-President, AFGE Local 2328
PO Box 3168
Hampton, VA 23663

Dear Ms. Mims and Ms. Elliott:

I am responding to your correspondence of October 18, 2006, May 21, 2007, January 12, 2007 and June 15, 2007, concerning a grievance filed by AFGE, Local 2328, over management's implementation of a 45-day (amended to 30-day) notice requirement prior to cancellation of scheduled clinics in the Primary Care Service Line.

Pursuant to delegated authority, I have determined, on the basis of the enclosed decision paper, that the issue presented is a matter concerning or arising out of professional competence or conduct and is exempted from collective bargaining by 38 USC § 7422(b).

Please provide this decision to your Regional Counsel as soon as possible.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael J. Kussman".

Michael J. Kussman, MD, MS, MACP
Under Secretary for Health

Enclosure

Title 38 Decision Paper – VAMC Hampton, Virginia
VA-07-03

FACTS:

This matter arises out of a grievance filed by the American Federation of Government Employees (AFGE), Local 2328, alleging that management at the VA Medical Center (VAMC) in Hampton, Virginia, violated Article 32, Time & Leave, of the VA/AFGE Master Agreement by requiring providers of the Primary Care Service Line (PCSL) to give at least 45-day notice prior to cancelling a scheduled clinic.

On August 22, 2005, the VAMC issued a Medical Center Memorandum (MCM), Memorandum 11-48 entitled, Management of Scheduled Appointment Cancellations and No Shows. (Attachment A)

On March 3, 2006, AFGE submitted a "Cease & Desist, Demand to Bargain" on the policy. (Attachment B) That same day, AFGE filed a Step I grievance alleging that employees in the PCSL had been denied leave because they did not request leave with advance notice of 45 or more days. (Attachment C) In the Step I grievance, the union referred to MCM 11-48, Paragraph 5b, which states:

"...A minimum **45-day** notice will be given prior to elective cancellation of a scheduled clinic date/time. Requests for elective cancellations sooner than 45 days prior to the clinic session will generally not be approved except in extenuating circumstances." (Attachment C, ¶ 2)

As a remedy, the union requested that management abide by Article 32 of the Master Agreement and eliminate the 45-day notice requirement. (Attachment C, ¶ 4)

On March 9, 2006, management submitted its response to the union's Step I grievance. (Attachment D) Management stated that no requests for leave had been denied in the PCSL. (Attachment D, ¶ 2) Management further explained that:

"...Prior to cancelling a clinic, all alternatives need to be considered such as alternative coverage, overbooks or scheduling during administrative times, keeping in mind patient care is the first priority and takes precedence over administrative time. Requests to cancel a clinic must be submitted in writing by the provider and accompanied by appropriate justification. When Providers request annual leave under 45 days, they are asked input as to how to handle any scheduled patients. If none is provided or specific directions are not given, PCSL administrative staff either have team cover as able and/or reschedule according to policy guidance. Patients are also called to ask their preference as many wish to