Below you will find the necessary requirements when requesting a 7422 determination from the Secretary. A sample Memorandum with each step has been included to help guide you through these requirements. Please ensure that you cite and attach all pertinent documentation.

1. State your request for a determination at the top of the Memorandum.
2. Provide a brief factual background of the issue to be determined.
3. Explain the clinical basis (if claiming a PCC exclusion) for the specific management decision(s).
4. Chronologically provide a detailed account of all management and/or union actions taken before submitting the issue for a determination
5. Provide dates of scheduled events that impact the timeliness of the Secretary ‘s determination
6. Provide details about when the parties (management or the union) entered information about the potential 7422 issue into the 7422 tracking system.
7. Provide information on the steps followed from the 7422 checklist and flow chart. You must cite the relevant actions you have described in the event chronology in Section 4.
8. Cite VA regulations, if any, pertinent to the issue:
9. Cite any prior USH/Secretary decisions of which you are aware that govern the same subject matter:
10. Clearly state the issue you would like the Secretary to decide and the exclusion under section 7422 which is being claimed (i.e. professional conduct or competence (direct patient care and/or clinical competence), compensation or peer review)
11. Provide your full contact information:
12. Have the Medical Center Director sign the request:

SAMPLE

**Department of Memorandum**

**Veterans Affairs**

Date:

From: Medical Center Director, VAMC, Anytown, USA

# Subj: Request for 38 U.S.C. § 7422(b) Determination

To: Secretary, Washington, DC (10)

Thru: Office of Labor Management Relations, VACO (LMR)

**1.** I am writing to request a determination by the Secretary that the actions and issues described below are excluded from collective bargaining or the grievance process under 38 U.S.C. § 7422(b).

**2.** On January 3, 2011, at a Strategic Planning Meeting, management of VAMC Anytown determined that a change in the staff mix of the Primary Care Clinic and the Urgent Care unit was required to improve patient care. More specifically, management determined that the Primary Care Clinic was overstaffed with Registered Nurses (RNs), while RN staffing at the Urgent Care unit was inadequate. (Attachment A) As a result, management reassigned three (3) RNs from the Primary Care Clinic to the Urgent Care unit.

**3.** The RNs who were reassigned -- Alice Apple, RN, Betty Ball, RN, and Candace Cook, RN – were chosen for their experience in Urgent Care, which was more recent and more substantial than the Urgent Care experience of the other RNs assigned to the Primary Care Clinic. Ms. Apple worked in the Urgent Care unit at VAMC Smallsville from January 2006 through November 2009, when she relocated to Anytown VAMC. Ms. Ball was detailed to the Anytown Urgent Care unit for six (6) months in 2010. Ms. Cook is an experienced Urgent Care and Acute Care nurse whose most recent Urgent Care assignment ended in June 2009.

**4.** A. On January 10, 2011, management gave Ms. Apple, Ms. Ball, and Ms. Cook written notice of their reassignments to the Urgent Care unit, with such reassignments to take effect on January 30, 2011. (Attachment B)

B. On January 10, 2011, management informed and offered to discuss with the ABC union, Local 1234, which represents registered nurses at the Anytown VAMC of the intent to reassign the nurses effective January 30, 2011. (Attachment C)

C. On January 11, 2011, the union requested to bargain over the RN reassignments. (Attachment D) More specifically, the union proposed that management first solicit volunteers to be reassigned from the Primary Care Clinic to the Urgent Care unit, and if there were not enough volunteers to fill the three (3) slots, that the least senior nurses from the Primary Care Clinic be chosen for the reassignment.

D. On January 14, 2011, management met with the ABC union and explained the underlying reasons for the need to reassign the three particular RNs. The union insisted on negotiating the proposals and the meeting ended without reaching agreement. (Attachment E)

E. On January 18, 2011 management contacted (regional counsel, the VA Central Office (VACO) Office of Labor Management Relations (LMR), or the Office of General Counsel (OGC)). Don Manager, LR Specialist at the VAMC, talked to James Helper from LMR to discuss the issue and confirm that the RN reassignments could be covered by the PCC 7422 exclusion. Mr. Helper informed us he believed the issue would be covered by the exclusions.

F. On January 20, 2011, management notified the union in writing that it considered its January 11, 2011 proposals to be non-negotiable and would implement as proposed.(Attachment F)

G. On January 21, 2011, the parties met and discussed the issues, tried to find a resolution, but could not reach agreement.

H. On January 22, 2011, management provided a formal written notice to the union that the reassignments would continue as scheduled and that the issue was covered by the PCC 7422 exclusion. (Attachment J) The notice was forwarded to the VISN Director with a request for assistance in resolving the issue informally.

I. On January 28, 2011, the union filed an Unfair Labor Practice (ULP) complaint with the Federal Labor Relations Authority (FLRA), charging that management had failed to negotiate in good faith over the RN reassignments. (Attachment G)

J. On March 3, 2011, VAMC management submitted its position statement to the FLRA, stating that the issues raised in the ULP was a matter of professional conduct or competence (PCC). (Attachment H).

K. On March 27, 2011, management sent the union a copy of its request to the Secretary for a 7422 determination on the above referenced case. (Attachment I)

**5.** On March 30, 2011, FLRA stated the case was in abeyance until a decision is made by the Secretary on the 7422 allegations. (Attachment J)

**6.** Management entered information about the above-referenced case into the LMR 7422 tracking system on January 20, 2011. As the case has progressed, management has updated the tracking system to include new developments.

**7.** As referred to in Section 4E, on January 18, 2011 management contacted (regional counsel, the VA Central Office (VACO) Office of Labor Management Relations (LMR), or the Office of General Counsel (OGC). We talked to James Helper from LMR to discuss the issue and confirm that the RN reassignments could be covered by the PCC 7422 exclusion. Mr. Helper informed us he believed the issue would be covered by the exclusions. (See Attachment K for Checklist)

As referred to in Section 4F, on January 20, 2011, Don Manager, LR Specialist for the VAMC, sent an email to Bill Union, union President, that it was the VAMC’s belief that the issue is covered by one of the 7422 exclusions and is therefore non-negotiable. Mr. Manager provided Mr. Union a copy of the statute, previous similar 7422 decisions, and invited the union to a meeting to discuss the issue and the union’s concerns.

As referred to in Section 4G, on January 21, 2011, the parties met and discussed the issues, tried to meet find a resolution, but could not reach agreement.

As referred to in Section 4H, on January 22, 2011, management provided a formal written notice to the union that the reassignments would continue as scheduled and that the issue was covered by the PCC 7422 exclusion. (Attachment J) The notice was forwarded to the VISN Director with a request for assistance in resolving the issue informally.

**8.** VA has promulgated regulations relating to the assignment and reassignment of RNs. These regulations are set forth in VA Directive and Handbook 5005, Part IV, Ch. 3, § B.

**9.** In several prior cases involving involuntary or directed reassignments of RNs, the Under Secretary for Health (or Secretary) has determined that such assignments involve professional competence and conduct within the meaning of 38 U.S.C. § 7422(b). These include: West Haven VAMC on October 24, 2002, Milwaukee VAMC on February 22, 2008 and VA Connecticut HCS on October 9, 2008.

**10.** We believe that the issue related to the ULP, including the union’s requested relief, is outside the scope of collective bargaining under Section 7422.

As stated above, Alice Apple, RN, Betty Ball, RN, and Candace Cook, RN were reassigned to cover patient care needs. The reassignment is excluded from collective bargaining because it is an issue of professional conduct or competence, specifically addressing direct patient care needs.

**11.** If I can provide additional assistance, please contact me at 123-456-7890 or your.email@va.gov, or the HR Manager, Peter Persons, at 123-456-7899 or peter.person@va.gov.

**12***. Donna D. Director*

Donna D. Director, MA, ACHE

Director, VAMC Anytown